

Public Utilities

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HIGH COST TO THE PEOPLE OF

Buncombe Utility Rate Laws

Useless expense imposed upon utility company customers and other taxpayers by futile laws in plain disregard of constitutional rights.

By ELLSWORTH NICHOLS

IT would be illuminating to have exhibited a compilation of futile laws passed by our legislatures, and also by municipalities, as mere political gestures to impress the public with the idea that the politicians are valiantly fighting against the public utilities, for the benefit of utility consumers.

Customers of public utilities and other taxpayers would receive a rude jolt if they knew what they had to pay out of their own pockets to satisfy the cost of such make-believe legislation. The usual complaint against useless laws is that they clutter up the law books and make unintentional law violators of good citizens. But in the

case of the buncombe laws mentioned the objection is more serious.

Glaring examples of the tendency to enact such legislation are found in maximum rate statutes.

These laws seem to be quite inexcusable in a state where the legislature has set up a public service commission to regulate rates.

The commission, at public expense, is required by law to make investigations to determine proper rates in view of all the facts. Then the legislature, utterly disregarding the efforts of the commission, and without the knowledge essential to formulate rates, often arbitrarily declares that a rate in excess of a certain amount

PUBLIC UTILITIES FORTNIGHTLY

prescribed must not be permitted.

The maximum rate is determined without any attempt to determine the actual cost of service.

A MAXIMUM rate statute limiting the price of gas in the city of New York is a good illustration of this legislative proclivity. Back in 1906 an 80-cent gas rate law was passed, before a public service commission had begun to fix gas rates. Apparently this was a proper legislative action in the absence of better regulative machinery. The gas companies operated under that rate for several years until it became inadequate by reason of the increased costs during the period of the World War. Actions were then started in court to determine its validity, and it was held by the Federal courts to be confiscatory and unconstitutional in the light of existing circumstances.¹

In the meantime, however, the public service commission had assumed regulation of the gas utilities, and after the 80-cent rate was declared invalid the commission undertook to fix reasonable rates after a complete investigation of utility operations. Rates were fixed in New York city considerably in excess of \$1 per thousand cubic feet. For at least one company the top rate was \$1.45 as fixed by an order entered in 1922.

Nevertheless the legislature, sweeping aside all the facts found by the commission, passed a law in 1923 arbitrarily limiting gas rates in New York city to \$1 per thousand cubic feet, and also requiring a higher thermal content. This threw the New

York city gas companies into the Federal courts, where they sought and obtained relief against the enforcement of the statute.²

A NOOTHER example comes from South Carolina, where the legislature in 1922 passed a law limiting telephone rates to the maximum prevailing on a fixed date prior to a commission order which had increased rates because the increase was found by the commission to be justified. A Federal court straightway held that the statute was unconstitutional, null, and void, since it prescribed rates which were confiscatory.³

No figures are available to show the total cost to the taxpayers and the ratepayers as a result of these laws, and others like them, but it is plain that the legislatures, by taking the matter out of the hands of the experienced commissioners, heaped untold expense on the public. The loss to the public from this type of legislation would include:

1. Charges against the taxpayers to finance the courts and public officials in a hopeless effort to sustain the legislation,

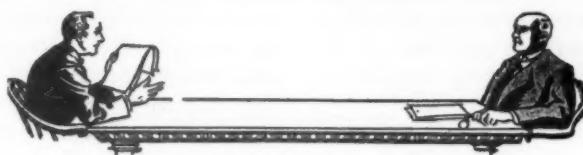
2. Charges against the ratepayers as an operating expense to meet the cost of resistance to such legislation by the public utility company,

3. Losses to ratepayers which represent the difference between rates in effect during the long process of litigation and rates which might have been in effect if reasonable requirements had been made instead of requirements so drastic that a declara-

¹ *Ottinger v. Consolidated Gas Co.* (1926) 272 U. S. 576, P.U.R.1927A, 37; *Ottinger v. Brooklyn Union Gas Co.* (1926) 272 U. S. 579, P.U.R.1927A, 39.

² *Southern Bell Teleph. & Teleg. Co. v. Railroad Commission* (U. S. Dist. Ct. 1925) P.U.R.1926A, 6.

¹ *Newton v. Consolidated Gas Co.*, 258 U. S. 165, P.U.R.1922B, 752.



Catch-vote Rate Laws Unfortunate for the Public

It is unfortunate for the public that members of the legislatures think more of coming elections than they do of the costs they impose on utility customers and other taxpayers by this foolish legislation. Passage of popular antiutility laws may gain the acclaim of the populace sufficiently to send legislators back for another term, although it is certain that the laws at some time later will be declared invalid."

tion of their invalidity is a foregone conclusion.

A BILL introduced in the 1934 New York state legislature would permit the state commission to cut utility rates during temporary emergency conditions, pending final determination, so that utilities might earn as low as 5 per cent return on "original cost less depreciation" of their properties.

Passage of this bill and action by the commission in accordance with its spirit could conceivably force a large part of the New York state utilities into the courts, which have definitely laid down the rule that rates must be based upon fair value rather than original cost and that the return must be fair.

Of course what constitutes a fair return may differ under different circumstances, at different times, and even in different parts of the same state. The judiciary in recent years have in some cases approved rates cal-

culated to produce as little as 6 per cent return, but the fixing of a 5 per cent return would seem to be a strong invitation for court intervention with more costs heaped upon the taxpayers and the ratepayers.

The original cost basis, however, is a clear bid for judicial interference—it puts a useless burden of expense upon the company's customers.

It is unfortunate for the public that members of the legislatures think more of coming elections than they do of the costs they impose on utility customers and other taxpayers by this foolish legislation. Passage of popular antiutility laws may gain the acclaim of the populace sufficiently to send legislators back for another term, although it is certain that the laws at some time later will be declared invalid. Even then the legislators can point with pride to their efforts in the common weal and blame the courts for opposition to the public interest.

PUBLIC UTILITIES FORTNIGHTLY

Passing the buck to the courts is part of the political technique. Political gestures of this sort may not indicate real statesmanship, but they do get votes.

To the credit of the legislatures, however, it may be said that many bills aimed at lower utility rates in disregard of constitutional rights are never passed; and it goes without saying that numerous applications made to the public service commissions—which are arms of the legislature—for orders reducing rates below a legal level, meet with no success because the commissions as a rule recognize their public responsibility and make an earnest effort to establish rates which are actually fair and legal.

COMMENDATION is due the Massachusetts legislature—at least up to the time of writing—for its treatment of the question of service charges. Following efforts to secure the passage of a law prohibiting a service charge, the question was referred to the Massachusetts Department of Public Utilities for investigation. The department upheld the service charge. This was a proper use of a fact-finding body equipped to determine such matters. If more legislatures would consult the experts on the commissions, there would be less foolish and costly legislation.

There are other types of tempting legislation which is useless except for its psychological effect upon the voters. For instance, Congress shifted—nominally—the 3 per cent power tax from utility customers to the electric companies. When this tax was placed directly upon the utility customers, they were quite aware that

they were paying it. When it was transferred to the utility companies, the utilities immediately included it as another operating charge which would have its proper weight in determining how high the rates should be, since, as announced by the United States Supreme Court and other tribunals, a public utility company is entitled to rates which will cover the entire cost of service including all taxes.⁴

THEN, too, legislation designed to charge against utility companies the expense of regulation has only a superficial effect so far as the public as a whole is concerned, although it does transfer the cost of regulation from general taxpayers to utility customers.

Whether this should be done is another question, beyond the scope of this discussion.

The fact remains, however, that voters are led to believe that these costs are being shifted from the general public to the investors in public utility enterprises. This is far from the case as all such expenses are included in operating expenses which have to be covered by the rates, except in the case of hard-pressed utilities like the street railways which, for economic reasons, are unable to recoup all their costs. Usually either the taxpayers or the ratepayers must eventually pay the freight.

Instances of flagrantly invalid legislation by local authorities are numerous, although under the practice of granting local franchises public utility regulation has been largely

⁴ *Galveston Electric Co. v. Galveston*, 258 U. S. 388, P.U.R.1922D, 159; *New York Edison Co. v. Maltbie* (1934) 1 P.U.R. (N.S.) 481.

PUBLIC UTILITIES FORTNIGHTLY

contractual so far as local authorities are concerned.

A recent instance of arbitrary rate fixing by a municipality was witnessed in Minneapolis where a city ordinance required a reduction in rates amounting to 19.4 per cent, although the council gas committee, after an investigation, had recommended a reduction of only 12.5 per cent. Enforcement of the ordinance was restrained by a Federal district court, which pointed out that the city had not shown a definite basis for fixing the rates.

The court also remarked that it was fair to assume that the council had fixed the arbitrary figure of 19.4 per cent "as a trading figure with expectation that some reduction less drastic would be agreed on between parties and accepted by the city council."⁵

PUBLIC service commissions themselves, acting as more judicious and informed branches of the legislatures, have not always been free from the temptation to approve orders against the utilities that are quite likely to founder on the rocks when they are started through the channels of judicial review. Fortunately this is not the general rule. Many expressions by commissioners evince their desire to do their duty as conscientious public officials.

⁵ Minneapolis Gas Light Co. Case.

Thus, they have stated that it is not within the province of the commission to pass upon or to determine the correctness of the conclusions of a court of the state in a controlling decision,⁶ that whether a commission agrees or disagrees with a decision of a Federal court as to valuation, rates, or earnings is immaterial where a Federal court has passed upon such questions and has given specific directions to be followed by the commission,⁷ and that a commission must be governed by the law as it is until the law is changed, and should not follow dissenting opinions and defy the courts by dissenting against the law and the courts.⁸

Commissioner Brewster of the New York commission, in refusing to vote for a rate reduction which he believed unauthorized, stated:

I cannot vote for a determination which in my opinion will result only in futile litigation and defeat any reduction in rates which the consumers are entitled to on the record and under the law. . . .

⁶ *Re Smith* (N. Y. 1929) P.U.R.1930D, 171.
⁷ *Re New York Teleph. Co.* (N. Y.) P.U.R. 1930C, 325.

⁸ *Re Indianapolis Water Co.* (Ind. 1923) P.U.R.1924B, 306. See also *Re Michigan Bell Teleph. Co.* (Mich.) P.U.R.1926C, 607; *Re Tonopah Water Co.* (Nev.) P.U.R.1924C, 519; *Moritz v. Edison Electric Illum. Co.* (N. Y. 1916) P.U.R.1917A, 364; *Philadelphia v. Philadelphia Rapid Transit Co.* (Pa.) P.U.R.1923E, 190; *Re West Penn Power Co.* (Pa.) P.U.R.1927C, 38; *Huntington Brick & Tile Co. v. United Fuel Gas Co.* (W. Va.) P.U.R.1929D, 502; *Re Wisconsin Teleph. Co.* (Wis. 1927) P.U.R.1928B, 434.



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PUBLIC UTILITIES FORTNIGHTLY

No permanent benefit is ever attained by violating the legal powers of the commission and the orderly carrying out of its functions. Such action can only result in court proceeding and delay the putting into effect of benefits which the commission could legally and within its power grant.⁹

Commissioner Lunn of the same commission, in a case where a temporary emergency reduction in railroad rates was denied because the commission had no jurisdiction to enter such an order, said:

The making of temporary rate orders would therefore, at this time, be a detriment rather than a benefit to users of the railroad. For when it was enjoined and much time wasted in litigation, the final determination of the proceeding would be delayed and the fixing by the commission of just and reasonable rates postponed.¹⁰

ADMITTEDLY there are many cases where laws are passed or rate orders are entered concerning which there may be a legitimate difference of opinion as to validity. No criticism is intended to be directed against commissions or legislatures which

⁹ *Re Rates and Rate Structures* (N. Y.) P.U.R. 1933E, 451.

¹⁰ *Berg v. New York, N. H. & H. R. Co.* (N. Y.) P.U.R. 1933D, 462.

make a careful study of the facts and in the light of legal principles reach a fair conclusion, even though in the end it may turn out that the action will not stand the test of judicial examination.

We should bring into public view, however, mandates which are flagrantly violative of constitutional rights and which are too often fostered because of political expediency.

Perhaps this expensive weakness in regulation may be ascribed partly to the political theory that public officials when approaching public utility problems should not act in a judicial capacity and render a fair judgment on the facts, but that they should strain themselves to the utmost towards an apparent public advantage and let the utilities look after themselves.

The utilities, of course, will, and necessarily must, look after themselves in the courts, but at what a foolish expense to the public!

The cost of buncombe laws is very high.



Odd Items about the Utility Services

IN the last seventeen years the number of telephones in the world has doubled.

* * *

THE number of customers using manufactured gas for house-heating purposes increased about 22 per cent during 1933.

* * *

The average cost per mile of a concrete highway is \$37,894.07. The average cost of a mile of railroad is approximately \$30,000.

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THE book investment in the country's railroad plant represents twenty-six billion dollars, according to estimates of the Interstate Commerce Commission.

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A Wall Street View of the Public Utility Situation

In the opinion of the author government competition with private utility plants, the steady rise in taxes imposed on the companies, the nation-wide attempt to obtain lower domestic rates, the favorable attitude of some commissions toward the theory that reasonableness of rates is measured by the ability of the consumer to pay, and the general uncertainty of governmental manipulation of currency, have tended to make the owner of public utility securities the *Forgotten Man* in the New Deal, but the outlook nevertheless is still not without promise.

By L. SANFORD REIS

No investor whose portfolio of securities includes public utilities will deny that the holder of these issues appears to be the "forgotten man" in the New Deal.

The 1926 price level which the New Deal has set as its goal has, presumably, no significance with respect to public utilities. During a period of many months utility obligations and equities declined substantially in price. This was not so much in reflection of the inability on the part of the industry to obtain new business as the result of other influences. It was not because of carelessness in the control of operating expenses and was not, in the large majority of cases, due to factors within managerial control.

General economic uncertainties undoubtedly played an important part in the price decline but from all available evidence it would seem that pub-

lic utility securities have been under heavy pressure in direct reflection of the policies of the Federal government, the attitude of regulatory commissions in most states, and a widespread popular clamor for rate reductions.

THE clearest indication of his attitude toward public utilities which President Roosevelt has advanced was included in his speech at Portland, Oregon, during the presidential campaign of 1932. Certain definite policies were outlined in that address. It would not be irrelevant to set down these policies and compare them with developments which have subsequently taken place. The following points were enumerated at Portland:

1. Full publicity as to all capital issues of stocks, bonds, and other securities, liabilities, and indebtedness, capital investment, and frequent in-

PUBLIC UTILITIES FORTNIGHTLY

formation as to gross and net earnings.

2. Publicity on ownership of stocks and bonds and other securities, including the stock and other interest of all officers and directors.

3. Publicity with respect to all intercompany contracts and services and interchange of power.

4. Regulation and control of holding companies by the Federal Power Commission and the same publicity with regard to holding companies as is now provided for operating companies.

5. Coöperation of the Federal Power Commission with public utility commissions of the several states, obtaining information and data pertaining to the regulation and control of such public utilities.

6. Regulation and control of the issue of stocks and bonds and other securities on the principle of prudent investment only.

7. Abolishing by law the reproduction cost theory for rate making, and establishing in place of it the actual money-prudent investment principle as the basis for rate making.

8. Legislation making it a crime to publish or circulate false or deceptive matter relating to public utilities.

FEW, if any, honest public utility companies—and, in the judgment of the writer, the majority of enterprises in the industry must be so classified—could conscientiously object to any of the principles therein enumerated. Had the principles been religiously followed to the minutest detail, the public utility industry today probably would be well along on the road to a sound and healthy basis. Public utility security holders would be substantially more certain of the ground on which they now stand; the “bad actors” in the industry—of which there are several—probably

would have been put in their places and the honestly, prudently, and conservatively managed public utility enterprises in the United States would probably be glad of a house cleaning which would dispel vague and senseless gossip about “power trusts,” “holding company tyranny,” and the numerous other shibboleths of the day.

Unfortunately, no legislation which embodies the President’s principles has yet been enacted and the administration’s program of public utility regulation has thus far, at least, been carried on along totally different lines.

THE most important element in the program has been an economically unjustified and totally unneeded expenditure of public moneys for the purpose of constructing or subsidizing the construction of hydroelectric generating plants in various sections of the country under the auspices of the Public Works Administration. The stated purpose of these expenditures, in so far as public utility regulation is concerned, is to provide so-called “yardsticks” in judging the soundness of domestic rates for electricity. On the basis of the “*modus operandi*” of the Tennessee Valley Authority the yardstick might more accurately be characterized as a slide-rule.

In direct reflection of the activities of the Federal government in financing the Tennessee Valley Authority program in Tennessee, the Grand Coulee program in Washington, and the Bonneville program in Oregon—major power developments in territories already oversupplied with installed electric capacity,—and in the

PUBLIC UTILITIES FORTNIGHTLY

government's indicated willingness to finance municipal plant expansion where private plants already exist, there has developed a widespread campaign for the municipal ownership of public utility plants in many sections of the country.

FUEL has been added to the flames by statements of Secretary Ickes, Public Works Administrator, with respect to loans to municipally owned projects to compete with privately owned plants. Secretary Ickes is recently quoted as follows:

If a municipality makes a survey and wants to build its own plant, it is not our business whether they have made up their minds wisely or not. They come here with their plans. We look at them and if they are all right we will let them have the money.

Obviously, any municipality which has an unemployment problem on its hands, and there are few which do not, is only too anxious to obtain money on the ridiculously easy terms which the Public Works Administration offers.

The economic objections to competition between a municipal plant and a private plant located in the same town and with duplicate distribution systems, are readily apparent. The outstanding objection is that one system, if it is properly constructed and managed, should be wholly sufficient to supply the citizens in the commun-
ity with electricity. It is sheer economic waste to duplicate an adequate plant.

FROM the viewpoint of the municipality itself, furthermore, there are certain very definite objections. Public utility companies during the last two difficult years have, in the large majority of instances, paid a substantial part of the taxes of many communities. Obviously, if the private companies are driven out, the funds needed to carry on municipal business must come from somewhere. "Somewhere," when traced down, is the pocketbook of the other taxpayers.

Recently an excellent example of the course which tax money follows was brought to light in Kansas City. A municipal electric system in Kansas City, Kansas, recently applied to the Public Works Administration for \$600,000 for construction of additional facilities. In Kansas City, Missouri, the Kansas City Power & Light Co., a privately owned enterprise, paid a Federal income tax in 1932 of \$600,000. The whole process would have been boiled down to fundamentals had the Kansas City Power & Light Co. written a check to the Kansas City municipal system and sent it directly on its way over the Kaw river. Why the taxpayers of Missouri should subsidize the electric business in



Q "GENERAL economic uncertainties undoubtedly played an important part in the price decline but from all available evidence it would seem that public utility securities have been under heavy pressure in direct reflection of the policies of the Federal government, the attitude of regulatory commissions in most states, and a widespread popular clamor for rate reductions."

PUBLIC UTILITIES FORTNIGHTLY

Kansas is incomprehensible but this transaction is a clear and effective indication of essentially what is happening in many portions of the United States.

THE underlying cause for the present wave of municipal plants, then, is not essentially an economic one, even though it cannot be denied that many citizens are now paying rates for domestic electricity to private companies which are far too high. It is equally evident that in many communities the private companies are earning an inadequate return on prudently invested capital and are providing excellent service at rates which are essentially fair and just.

Those who claim that *any* municipal plant is preferable to *any* private plant are not in full possession of the facts. To make such a claim is, in essence, to state that *all* private electric companies are greedy and dishonest and that *all* politicians (for politicians are in control of municipal plants in many cities) are altruistic and virtuous.

The underlying cause lies in the easy terms upon which Federal funds are available to municipalities. Were these uneconomic subsidies and grants discontinued, an important factor—if not the most important factor—in the price declines in otherwise well-protected public utility obligations, would be eliminated.

THE second major burden with which utility companies have had to contend has been the persistent and steady rise in taxes.

At the last session of Congress, our Federal legislators decided that it would be a wise course of action to

transfer the 3 per cent tax previously paid by domestic and small commercial consumers, from the shoulders of these consumers to the shoulders of the company. It might be imagined from this that the tax on the consumer was a crushing one. An honest analysis indicates otherwise.

The average domestic user pays something less than 10 cents a day for his electricity. Some pay more, others pay less, but 10 cents is about the average for the nation as a whole. By eliminating the 3 per cent tax the consumer saves the modest sum of 3 per cent of 10 cents, or less than one third of a cent daily.

It is equally obvious that Uncle Sam gains nothing by the transaction since, from the viewpoint of the Federal treasury, it is of no significance whether the 3 per cent comes from the company or from the consumer. The burden on the private company, however, is heavy and a loss of 3 per cent of gross revenues from domestic and commercial sales represents a considerable item.

THE impoverished condition of many municipalities, counties, and states, furthermore, has resulted in a steady increase in taxes levied by these governmental divisions against the private companies. The fact that the electric companies have been financially able to pay taxes has provided a further incentive for singling out utilities and adding to their burden.

The Detroit Edison Co., which is generally regarded as a competently managed electric company, has prepared an interesting tabulation of its tax bill in recent years. See table



The Effect of the 3 Per Cent Tax on Electricity

THE average domestic user pays something less than 10 cents a day for his electricity. Some pay more, others pay less, but 10 cents is about the average for the nation as a whole. By eliminating the 3 per cent tax the consumer saves the modest sum of 3 per cent of 10 cents, or less than one third of a cent daily. . . . Uncle Sam gains nothing. . . . The burden on the private company, however, is heavy."

on page 571. It is given as a typical example of the tendency in this direction and as a clear indication of the major difficulty with which the private companies have had to contend.

The 1934 figures when available will show an even less encouraging picture because of the assumption of the 3 per cent Federal tax by the company for a full year.

THE third major depressant has been a virtually nation-wide attempt to obtain lower domestic rates. Public utilities, unfortunately, are the ideal target for attack. They offer an issue upon which it is possible to take a definite position which is popular with the many and unpopular with the few. No politician ever lost a campaign for "cussin' out the power trust." No disinterested student of

public utilities will deny that many companies charge the domestic consumer too heavily. No honest and competent observer will deny that many companies are entirely just in their rates.

Relative to 1913 prices electric rates are low because they expanded but slightly during the price inflation period subsequent to the World War and contracted steadily from 1921 to date. In terms of 1929 prices, it is obvious that the decline to date has not been as marked as that which has taken place in commodity prices generally. But, it should be remembered, public utility electric rates never advanced as commodity prices did. Thus it is unjust to compare the general level of 1929 prices and the electric rate level in 1929 with 1933 price levels in both cases.

PUBLIC UTILITIES FORTNIGHTLY

In addition, it is clear that the tax burden has steadily mounted during the past four years and we are all fully aware of the added cost which arises from honest coöperation with the NRA program. Public utility companies, therefore, have been squeezed between mounting costs on the one hand and pressure for reductions on the other. Obviously, this situation cannot continue indefinitely if the industry is to remain solvent.

ANOTHER cause for distinct uncertainty over rates has been the legal philosophy adopted by certain regulatory commissions. Were the situation not so serious, it might almost be ludicrous.

The latest theory of rate making is the setting of rates on the basis of the consumer's ability to pay. Stated otherwise, if the consumer of electric service is a pauper he should pay little or nothing for the service. The Utah Public Utilities Commission, in a recent decision concerning the electric rates of Telluride Power Co., ordered a reduction of 10 per cent. It stated in this order that the commission took full cognizance of the fact that the earnings of the utility would be lowered below the point generally considered as a fair return, but it held that "regardless of the costs of operation of the utility or its financial condition, the cost to the consumer should in no event exceed what the services are reasonably worth to them."

What this vague statement might mean is, frankly, beyond the powers of the author to comprehend, but it is obvious that if everyone in the territory of the Telluride Power Co. were impoverished, the commission

probably would reduce electric rates to substantially nothing per annum since the value of electric service to a pauper is negligible.

THE fourth and final major adverse influence upon public utility bond prices has been the general uncertainty over currency matters and continued fears that a major period of inflation will take place. One statistical organization naïvely contends that if commodity prices soar, public utility properties will be worth more. The fallacy of this argument is readily exposed. The asset value of public utility property—and other property as well—will rise only as a result of an increase in the profitability of the business. If the costs of public utility operation rise because of higher prices for coal, labor, and other expenses, and rates cannot be increased at a proportionate pace—if indeed any increases at all could be obtained—the effect on profits would be disastrous. If profits decline, the value of the property which produces declining profits will inevitably decline. Thus, uncertainty over the currency and fear that just such a situation will come to pass undoubtedly will continue to act as a depressant upon public utility obligations.

We have set out what appear to be the outstanding reasons for the abnormal declines in public utility security prices during past months and from the above it might very well appear that the situation is, if not hopeless, rapidly trending in that direction. There is, however, reason to believe that even if all will not be well in the near future, the public utility industry has not definitely "gone to the dogs."

PUBLIC UTILITIES FORTNIGHTLY

A N alleviation of some of the four uncertainties mentioned above is certainly not inconceivable. The Public Works Administration's funds will ultimately be drained unless Congress decides that the cure for depression is to continue to expend billions in "pump-priming." It is possible, too, that municipalities, states, and the Federal government will economize or scale down their obligations to a point where further increases in taxes will be unnecessary. It is possible, finally, that inflation will be avoided.

Nor are the public utilities entirely supine and defenseless against these attacks. While recourse to the courts is always an undesirable resort, definite steps in that direction have been taken. Probably the most significant step was the action of the Public Service Electric & Gas Company in challenging the proposed construction of a municipal plant in the city of Camden, New Jersey. On November 7th, last, Camden voted a \$10,000,000 bond issue for the construction of such a plant in the hope that funds would be available from the Public Works Administration for the financing of the project.

As indicated, this action was characteristic of similar programs in other sections of the country and the legal action started by the private

company which now serves Camden, Public Service Electric & Gas, is an important step in testing the constitutionality of the present Public Works Administration program in so far as public utilities are concerned. Among the points cited by the company in bringing its action was the highly significant statement that "the Federal government has no legal power or authority to give or loan money of the United States to the city of Camden to build or aid in building an electric light plant."

It is clear that a major issue has been drawn in this case and should the private company be successful in the action, the effects will be far-reaching in throttling the present Federal program of extending its sphere of influence, directly or indirectly, into the ownership and operation of electric companies in various parts of the United States.

From the viewpoint of a market for electricity and gas, the industry still has an outlook of great promise. Under the impetus of general economic improvement it is virtually certain that the demand for electric and gas service will continue to rise and, in this way, many of the added burdens may be partially or wholly offset.

It is obvious from the foregoing that the most careful selection of se-



The Detroit Edison Co.

Taxes per Dollar of Gross Earnings

Year	Gross Earnings	Taxes	Taxes per Dollar of Gross Earnings
1929	\$56,558,278.78	\$5,436,000.00	9.6
1930	53,706,925.69	5,750,000.00	10.7
1931	49,232,500.69	5,767,000.00	11.7
1932	44,070,031.17	5,699,000.00	12.9
1933	41,492,268.62	5,289,000.00	12.7

PUBLIC UTILITIES FORTNIGHTLY

curities is necessary and that the former yardsticks of public utility security valuation, under the present order of things, no longer are satisfactory gauges. Agitation for municipal plants, changes in taxes, demands for lower rates, and Federal competition have widely varying effects upon different companies and the selection of public utility bonds consists in large measure of anticipating and interpreting these external developments as well as carefully appraising the internal factors in each company.

MANY public utility bonds have weathered the storm and con-

tinued to sell at par or above. Numerous others, formerly regarded as sterling investments because of ample stated earnings, conservative accounting, fiscal and corporate policies, honest balance-sheet appraisals, soundly conceived capital structures, fair rates, and satisfactory public relations, have shown precipitate declines in price because of external developments.

The problem of the banker in selecting public utility bonds involves accurate information in a rapidly changing situation, alertness, and judgment. Never were these qualifications so necessary as during the present period of storm and stress.



Thumb-nail Essay on Profits of Utility Customers

This essay consists mostly of a quotation.

* * *

We hear a great deal from our political leaders about the profits of utility companies.

* * *

Nothing is ever said about the profits of utility company customers, but the profits of the customers are greater than those of the stockholders.

* * *

Michael Pupin invented an electric telephone device which was very profitable.

"A vice president of the American Telephone and Telegraph Company, who is a very high authority in telephony," said Professor Pupin, "informed me recently that one way to describe roughly the value of the invention is as follows: If during the past twenty-two years his company had been compelled to extend its network of conductors so as to give without employing my invention the same service which it is giving today, it would have had to spend at least one hundred million dollars more than it has actually expended. But, after quoting him, I wish to call attention to a fact which the public often overlooks. I ask where are those one hundred million dollars which the invention

has saved? I know that not even a microscopic part of them is in the pockets of the inventor. I have figured out also with the same accuracy with which I once figured out the invention that those hundred million dollars are not in the pockets of the telephone company. They must be, therefore, in the pockets of the American public. The invention made it possible to give the telephone service which is now being given at a lower rate than would have been possible if one hundred million dollars more had been spent. Every good invention benefits the public immeasurably more than it benefits the inventor or the corporation which exploits the invention."—From "Immigrant to Inventor."

* * *

Professor Pupin is right.

* * *

The managers of public utility companies, the technical staffs, and the inventors of instruments of service make more money for utility customers—the public—than they do for utility company stockholders.

* * *

The public reaps the greatest profit. Utility companies put more money into the pockets of the people than they take out.

Spokesmen of the People



Some of the outstanding members of the House of Representatives, Seventy-third Congress, distinguished for their contributions to various lines of thought, often of importance to the utilities.

This is the fifth of a series of pictorial supplements to PUBLIC UTILITIES FORTNIGHTLY that portray commissioners, utility leaders, legislators, advisors, and economists who play important rôles in our economic and social development.



Harris & Ewing

Magnus Johnson

REPRESENTATIVE FROM MINNESOTA

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Joseph W. Byrns
REPRESENTATIVE FROM TENNESSEE

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REPRESENTATIVE FROM ILLINOIS

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Edgar Howard

REPRESENTATIVE FROM NEBRASKA

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International

Paul J. Kvale
REPRESENTATIVE FROM MINNESOTA

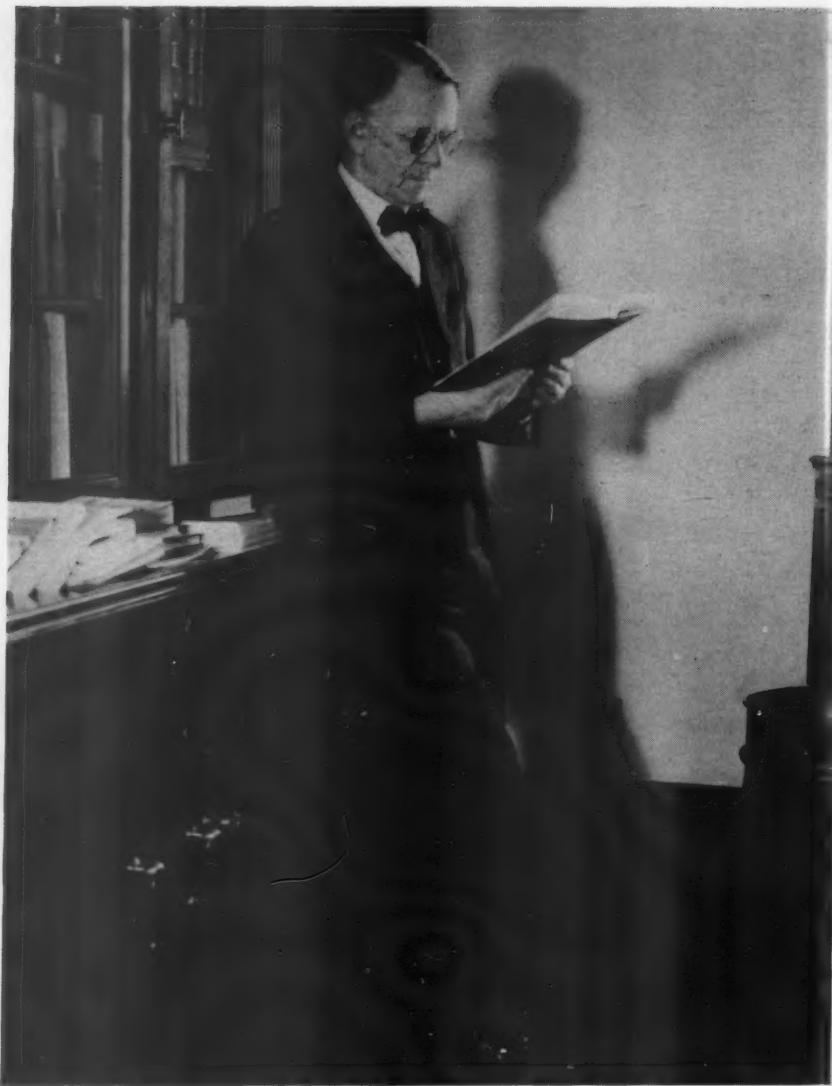
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REPRESENTATIVE FROM WISCONSIN



Heavens! The Brains Trust

A picturesque and powerful group in and outside of the government who are said to initiate New Deal policies

THE surprising charge of Dr. William A. Wirt, of Gary, Ind., that certain members of the so-called "Brains Trust" are bent upon revolution which they are secretly fomenting and which contemplates supplanting President Roosevelt by a man of the Stalin type—no matter in what light that accusation may be regarded—again directs attention to the personalities and beliefs of that coterie of men of academic learning and inclination whose influence on present governmental activities has been very marked.

By HAROLD BRAYMAN

Two years ago if one had been seeking the sources of new ideas in Washington he would have gone to a little group of outstanding men in the United States Senate; today he would undoubtedly consult the same group, but if he wants to know what Congress will be debating a year from now, he moves on to that scattered and sometimes obscurely placed group of young men known as the brains trust.

The Senate may debate but the brains trust initiates.

Spread about through the various administrative branches of the government are twenty or more men of academic background who draw the bills that are presented to Congress, who are consultants of the President in the development and outlining of policies.

It was Professors Warren and

Rogers, aided by the technical assistance of Herman Oliphant, who fostered the Gold Reserve Act of 1934 under which the dollar was devalued. It was Assistant Secretary of Commerce John Dickinson, General Hugh S. Johnson, and Senator Robert F. Wagner who drew the National Recovery Act. It was Dr. Rexford G. Tugwell, Assistant Secretary of Agriculture, in whose mind was incubated many of the moves taken for the farmers. It was James M. Landis of the Federal Trade Commission, Max Lowenthal, and two youthful practical assistants who drew the non-leakable stock-market regulating bill. It was Huston Thompson who drew the Securities Act. The now divorced Raymond Moley was responsible, it is understood, for many of the early moves of the administration and for its foreign policies.

PUBLIC UTILITIES FORTNIGHTLY

LOCATED in a strategic position in almost every administrative branch of the government is a brains trust member, whose main purpose is to study, to evaluate, to act as a consultant with the President on present progress and future potentialities of the New Deal.

Consequently these men have acquired an importance far beyond that indicated in most cases by their official titles. Generally speaking, they are young, ambitious, sincere, and purposeful men. They are faithfully seeking to find and eliminate the flaws in the American economic system. They have no self-interest to serve except by doing their job so well that they succeed in making national reputations.

The brains trust started with small beginnings but has grown to very considerable proportions. It first began in that far-away time that seems almost appropriately named by the two letters "B.C."—before the Chicago convention. When Roosevelt, then governor of New York, started to prepare material for his campaign for President he obtained Raymond Moley, professor of public law at Columbia University, to help him gather and assimilate it. Moley soon brought in Dr. Tugwell and Adolf A. Berle, Jr. The former was a professor of economics, the latter a professor of law.

THESE three were the original brains trust. They went up to Albany constantly on afternoons, had dinner at the executive mansion, discussed economics and government policies until late at night, and then took a train back to Columbia. Be-

tween visits they collected material. It was then discussed at the next meeting, and stored away in brief cases to be available when Mr. Roosevelt had to write a speech. The material was entirely reworked in most cases and the speeches as they came out were Roosevelt's but the contributions of the brains trust to the quality of the campaign he waged and the unassailability of many of his campaign positions were very great.

Of the group as it existed then, only Tugwell remains in an official position. Although still making occasional unobtrusive visits to the White House, Moley is editing the magazine "*Today*" in which he is trying to interpret the New Deal, and Berle has become city chamberlain of New York. But a vast new group has come in during the process of building up an administration.

IN the Department of Agriculture and associated activities this band is headed by Tugwell and includes Mordecai Ezekiel, Howard E. Babcock, M. L. Wilson, William I. Myers, governor of the Farm Credit Administration, and Jerome Frank, counsel to the AAA. In the NRA it is Donald Richberg and half a dozen technical men in various strategic places. In the Tennessee Valley Authority it is Arthur E. Morgan and David E. Lilienthal. In the Interstate Commerce Commission it is Commissioner W. M. W. Splawn; in the Federal Trade Commission it is Commissioner James M. Landis; in the Commerce Department it is John Dickinson, assistant secretary; in the Department of Justice it is Albert Lévitt, special assistant to the

PUBLIC UTILITIES FORTNIGHTLY

Attorney General; in the Treasury it is Herman Oliphant, counsel, and Professors George W. Warren and James Harvey Rogers as unofficial advisors.

THE first and last groups may be dismissed from this article because their personalities and viewpoints have only an indirect effect on the utility industry, however powerful that effect might be. That it is powerful cannot be denied in the case of the revaluation of the dollar or the success or failure of the rehabilitation of agriculture. If revaluation and stabilization of the dollar within an area have the ultimate effects intended, the utilities will share in the increased business of a recovering nation, but will face new difficulties in rates adjusted to a more valuable dollar. If the creation of a successful and prosperous agricultural industry can be consummated, wide potentialities for expansion of the utility industry will exist as the extension of all modern conveniences and appliances to the farms goes on and vast new markets, especially for electric power, are built up.

ONE only, cannot be overlooked in this group—Dr. Tugwell. That is because he, as the sole remaining member of the original brains trust still holding an active post in Washington, has a profound effect upon the thought of many other individuals.

He has stated for himself the purpose of building a "rationale" of the entire emergency action of the administration. Ernest K. Lindley, in his book, "The Roosevelt Revolution," said that Tugwell "is the philosopher, the sociologist, and the prophet of the Roosevelt Revolution." He follows fully the admonition of Justice Brandeis that "if we would guide by the light of reason, we must let our minds be bold." In fact, making no pretenses of being a politician, his ideas are so bold on most matters that he is rather affectionately referred to by the President as "the Bolshevik."

Dr. Tugwell has frequently advocated even more drastic steps than have been taken in the reorganization of the American economic system and is eagerly plunging ahead to goals he dreams of. No bounding intellectual or economic sea, no matter how uncharted, holds any terror for his roving mind.

He was born on a farm at Sinclairville in Western New York, but went to the Wharton School of Finance at the University of Pennsylvania until he had obtained three degrees. He was an instructor in economics at Pennsylvania before going to Columbia. While in New York he spent much time with people of extra-liberal and socialist leanings, and in 1927 spent two months in the Soviet Union with such a group. It was he who



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PUBLIC UTILITIES FORTNIGHTLY

discovered the domestic allotment plan for the improvement of agriculture—a device which had been worked out in the wide open spaces of the West—and explained it to Roosevelt, who saw merit in it and eagerly espoused it. He has written one book "Industry's Coming of Age," collaborated on another, "American Economic Life," and since the Roosevelt administration took office has contributed a revealing piece called "Design for Government" to the *Political Science Quarterly*.

IN the last book he set forth an inflexible will to make "the monster of industry" bow before the strong arm of the government.

"Today and for tomorrow," he wrote, "our problem is that of our national economic maintenance for the public welfare by governmental intervention—any theory of government, law, or economics to the contrary notwithstanding."

He also advanced the suspicion that for the most part those who criticize the emergency actions of the administration and call them unconstitutional "dislike them either because of meager understanding or because of fear that some protected privilege will be exposed and abolished."

He has not yet come in contact officially with the problems of government and the utilities, but if he is ever called in as an advisor, as he is very likely to be, no one need expect mild or wishy-washy views from him. He charges an economic windmill as nonchalantly as the ordinary individual strikes off the head of an obtrusive daisy with his walking stick.

The brains trust member who has

the most direct influence upon public utilities, and whose views on the questions of governmental policy concerning them will be most important is Arthur E. Morgan, chairman of the Tennessee Valley Authority. The man who is in charge of the venture into government ownership which is being made in "the valley" might be called a practical theorist.

HE is not the ordinary "brain trust" coming from an atmosphere of ivy-clad, century-old stone buildings, elm trees, and the faculty of economics. Instead, he is an engineer who went through the school of hard knocks while he was getting his college education, and only by accident many years later became president of Antioch College.

Antioch is a little college in the village of Yellow Springs, Ohio. Morgan first visited it when he was the engineer in charge of the flood control project on the Miami river a few miles north of Dayton—a development that grew out of the disastrous Dayton flood many years ago. The college authorities elected the engineer to the board of trustees. He attended a few meetings and spoke out his mind on the necessity of educating people for life as well as for culture. The board was so impressed that when the flood control job was finished they made him president of the college.

With his appointment, there developed the most unconventional college in America. At Antioch the students alternate between study and work, whether they need to work to finance their education or not. They study for a few weeks and then the



Strategic Positions Occupied by Members of the Brains Trust

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college gets them a job in an atmosphere as different as possible from anything they have known before. If a student comes from a well-to-do Eastern urban family, he is probably sent on his first work period to a coal-mining town in Pennsylvania. On the next he may be sent to a ranch in Wyoming, on the next to a mill in Birmingham, and on the next to the assembly line in a Detroit automobile plant.

IT was from that atmosphere, and with that background, that Dr. Morgan came to take control of the public utility experiment in the Tennessee valley.

His ideas about electric power utilities are clear and thoroughly fixed. He believes that government ownership and operation are essential in order to obtain the unified control of

water resources that he believes fundamental to the production of cheap power.

The storage of water during the winter and spring and the release of it gradually during the dry summer and fall is necessary, he believes, to flood control, navigation, and power development. The number of possible storage sites are strictly limited by nature and if these are destroyed the whole program of control must fail, he argues. In that connection he points out instances of smaller storage reservoirs for power that had been allowed to fill with eroded clay in ten years. Any power policy which allows dams to be built and then permits the reservoirs to fill with silt is purely wasteful, he contends. Private companies, he argues, can build the dams, but they cannot go back to the headwaters and stop the erosion

PUBLIC UTILITIES FORTNIGHTLY

which fills the reservoirs with mud.

CONCERNING the Norris Dam on Cove Creek, which is to create one of the largest storage reservoirs in the world, he recently wrote:

If this plant should be operated as an isolated unit by a private company, the water would be used as needed for that plant and its regulative effect on the Hale's Bar Dam, the Wilson Dam at Muscle Shoals, and other possible dams on the Tennessee river would be too irregular and uncertain to be of much use. However, if all these plants are operated as a single system connected by transmission lines, the Norris Dam power plant can shut down during high water when there is abundant power on the Tennessee river, and it can operate when the Tennessee river is low. These possibilities are not limited to the Norris Dam but apply to 20 or 30 other projects on the headwaters.

WITH Dr. Morgan on the Tennessee board sits David E. Lilienthal, a protégé of Felix Frankfurter of Harvard. Mr. Lilienthal is a very young man. His first job of importance since graduating from law school was his position as a Wisconsin Public Service Commissioner. Following that he is now a member of the Tennessee Valley Authority in charge of power transmission and distribution on the Tennessee. Only a few months ago he sent public utility stocks into a long decline by issuing a schedule of rates at which power would be sold—rates far below the best that private companies can do, and below what many experts think will be the best that the Tennessee Valley Authority can do. At least they want to see it done first. Mr. Lilienthal is well known in Tennessee and Alabama, but he is not so well known in Washington where he has been hampered by a deep and unjustified suspicion of all newspapermen—a suspicion which characterizes

many amateurs in public life. He is utterly lacking in the first requisite of statesmanship, which is the ability to lead the forces of a short-sighted majority into serving the purposes of far-sighted common good. He knows only his objectives, and, seemingly, how to arouse the strongest antagonisms against them.

ANOTHER member of the brains trust whose views on utility matters may have a profound effect upon the utility industry is Donald Richberg, general counsel for the National Recovery Administration. While Mr. Richberg is not strictly classifiable as one of the brains trust, if one applies the professorial background as a prerequisite, yet by every other consideration he belongs in the group of intellectuals who have acquired great influence in the Roosevelt administration. Next to General Johnson, he is the most powerful individual in the NRA. He had an important part in the theorizing which led to its creation. His viewpoint on public affairs coincides fully with that of the other members of the brains trust. And he is in a position where his influence on utility codes can exert an important effect upon the industry.

His background is inextricably connected with the Senate progressives, for whom he was an important consultant at the time of his appointment to the NRA. He came to national attention long before anyone dreamed that Franklin D. Roosevelt would be President of the United States in 1934. It was through Richberg's activities as an attorney for railroad labor and for the ratepayers in the

PUBLIC UTILITIES FORTNIGHTLY

city of Chicago that he became known.

He led the fight of railway labor against injunctions. He was special counsel for Chicago for twelve years in litigation against the Insull interests. As counsel for a nonpartisan committee he obtained a valuation of \$85,000,000 on Insull properties instead of the \$140,000,000 claimed.

THE fight of union labor against the confirmation of Judge Wilkerson to the circuit court of appeals was led by Richberg. He drafted the railway labor act of 1926. As counsel for railway labor unions he obtained \$300,000,000 increases in wages. He helped write the labor provisions of the NRA.

Back in the early twenties he became a La Follette progressive and director of the National Legislative Reform Bureau of the Progressive Party. He is a close friend of Gifford Pinchot and with him developed the idea of an interstate trade commission, which under Woodrow Wilson became the Federal Trade Commission.

Yet he is not the cantankerous reformer that this recital of activities would suggest. He is jovial and friendly and has a philosophic instinct for getting pleasure out of life. He plays a violin excellently, writes tolerably good verse, and has even written a few songs. He has the lawyer's capacity for being a good fellow

toward those with whom he disagrees as well as toward those with whom he agrees. And he has the same urbanity that characterizes most of the other graduates of the Harvard Law School, none of which he has lost in thirty years of crusading since his graduation.

HIS views on utility questions are clear-cut, definite, and uncompromising. They are perhaps best shown in a brief way by the following excerpts from a lecture on "The Future of Power and the Public" which was printed in January, 1932, in the Annals of the American Academy of Political and Social Science.

To those who are willing to face the facts, it should be clear that the development of electric power up to date, despite its many beneficial results, is one of the forces that has aided to deepen and to intensify a profound conflict of interest between what may be called the property-owning and the property-using classes of society.

In the electrical industry the operations of the prevailing [economic] system are clearly exemplified. We find many of the largest operations in this field conducted in a financial structure which is economically indefensible, with a maze of holding companies and operating companies and bonds and debentures and stocks which offer gambling chances instead of security to the investor, who in many instances would never invest if he knew how insubstantial were the claimed values behind his securities.

We have here also an industry openly operating for the most part on the policy that commercial enterprises should be favored over domestic consumers, thereby making it much easier to increase production than to increase consumption—encouraging one of the worst faults of our



G"If revaluation and stabilization of the dollar within an area have the ultimate effects intended, the utilities will share in the increased business of a recovering nation, but will face new difficulties in rates adjusted to a more valuable dollar."

PUBLIC UTILITIES FORTNIGHTLY

industrial leadership. We find here also an industry dominated by an un-American labor policy, denying the historic freedom of American life to its employees, and at best subjecting them to a degrading sort of paternalism.

Worst of all we find that this industry has produced the newest, the latest, and perhaps the largest crop of private regulators of government, who have as an industrial policy, deliberately sought to control government and public opinion through a systematic corruption of public officials and through persistent methods of poisoning the sources of public opinion and even public education. . . .

The private owners and operators of public utilities are engaged in the business of making as much money as possible, and while they may enjoy a sense of public service just as much as a dry goods merchant (or a wet goods merchant) they are not selected by the public or responsible primarily to the public. They are chosen by men who have invested money in order to make money out of selling something that a large number of people must buy.

When they describe themselves as public servants they are attempting to divert attention from the fact that they are private servants. No man can serve two masters. When they treat their public obligations as though they were voluntarily assumed instead of imposed on them by law, they are attempting to make a virtue out of a necessity. When they seek an unquestioning public confidence, they are attempting to gain a freedom from control, which private pressures will compel them to abuse. . . .

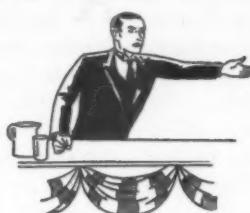
If it seems to be the indication of these remarks that I believe the private operators of public utilities are enemies of society, I would make it clear that it is particularly this pretense of public service that I regard as hostile to the general welfare, just because genuine public interest is so urgently needed. It seems to me that the time is already here when all essential industries must accept a definite social responsibility and be subject to some measures of effective control in the interest of consumers and workers, in modification of their present absolute control by ownership. One of the principal barriers to a clear understanding of this problem and the means for its solution, is the universal pretension of large enterprises that they are already responsive to social obligations. And the privately owned utilities are the worst offenders in this profound deceit.

ANOTHER "brain truster" not nearly so well known as Donald Richberg, but who is in a key position

in the Roosevelt administration is James M. Landis, former law clerk to Mr. Justice Brandeis of the U. S. Supreme Court, who now at thirty-four is a commissioner of the Federal Trade Commission and one of the chief figures in the administration of the Federal Securities Act. When the Stock Exchange Act is passed he will be an important force in administering whatever powers are given to the Federal Trade Commission by it.

He was born in Tokyo, the son of a Presbyterian missionary, in September, 1899. He went to Princeton and Harvard and the Harvard Law School, which he left to go with Justice Brandeis in 1925. A year later he returned to Harvard as a member of the faculty where he remained until his appointment to the trade commission, at which time he was professor of legislation. He is one of the closest protégés of Justice Brandeis and Felix Frankfurter among all of them who have found places in the administration. In 1927 he wrote a book with Professor Frankfurter called "The Business of the Supreme Court."

THERE has been much talk of the "Frankfurter influence" in the Roosevelt administration. While it is true that Professor Frankfurter was an ardent supporter of Mr. Roosevelt, and has suggested many people to him for appointment, he has been absent from the country for some months as an exchange professor at Oxford and can have had little direct part in the administration of the Roosevelt program, although his indirect influence has obviously been felt.



Brains Trust Influence in Tennessee Valley Development.

THE brains trust member who has the most direct influence upon public utilities, and whose views on the questions of governmental policy concerning them will be most important is Arthur E. Morgan, chairman of the Tennessee Valley Authority. The man who is in charge of the venture into government ownership which is being made in 'the valley' might be called a practical theorist."

LANDIS is one of the people appointed almost entirely on Mr. Frankfurter's recommendation, but he gives promise of being more successful than two of the other such appointees, Dean G. Acheson, former undersecretary of the Treasury, and Mr. Lilienthal. Mr. Landis has stated little of his views of the utility question, although nine years ago he wrote a letter to the New Republic complaining about an editorial in reference to the Colorado river and expressing doubt whether the Federal government could or would adopt a constructive plan for the development of the river. He cited the "eloquent testimony of Muscle Shoals" and the 15-year debate preceding the Water Power Act of 1920.

He is hot for the strict regulation of utility security issues, however, and trading in them, along with the issuance of and trading in all other

securities. He was a special advisor to the Federal Trade Commission in setting up the securities control division, and since going on the commission has made that his chief interest.

Over in the Department of Justice, placed as special assistant to the Attorney General, is Albert Lévitt, former professor of law at the Brooklyn Law School of St. Lawrence University. As the chief advisor of the Attorney General on utility litigation he advocates a widespread court attack upon present utility rate structures.

IT is his contention that the government, being a user of power in all of its public buildings and post offices in practically every village and city in the country, should go into the courts as a consumer and attack the rate structure. Being a consumer, it

PUBLIC UTILITIES FORTNIGHTLY

has a right to challenge the rates. It has the money to go through with such suits, which private customers with the will to do so rarely have. As a consumer it could start a rate case against practically every utility in the nation. Such a move, he has argued, would produce a change of sentiment in the country on the part of utilities and create a willingness to compromise on "reasonable" charges. It is his belief that the government should enter upon these cases at once.

Mr. Lévitt is forty-seven years old but did not graduate from college until he was twenty-six. His first degree was from Columbia. Later he received degrees from Harvard and Yale, lectured on philosophy at Columbia and Colgate; was an assistant professor of law at George Washington University and a professor of law at the University of North Dakota. He was at the Brooklyn Law School from 1927 to 1933. Sandwiched in between these activities he was a special assistant to the Attorney General once before—in 1923-24.

He has a prolonged war record beginning with service in the Philippines as a private and sergeant from 1904 to 1907. He was with the American Ambulance unit of the French Army at the front in 1915. From June to September, 1917, he was regimental sergeant major of the Harvard ROTC and from September, 1917, to January, 1919, he was a chaplain in the United States Army. He was wounded and gassed. He has long been a crusader against the utilities and three years ago wrote a book on the subject. It was called "The Public Utilities of Connecticut."

ANOTHER important figure among the brains trust is W. M. W. Splawn, recently appointed to the Interstate Commerce Commission. He holds six university degrees. His academic career began as an instructor in social sciences at Baylor College from 1910 to 1912. It was interrupted for three years while he went with a law firm in Fort Worth. In 1916 he went back to Baylor as professor of social sciences for three years. He was professor of economics at the University of Texas from 1919 to 1928 and president of the university from 1924 to 1927. From 1927 to 1928 he was also director of research in social sciences. He came to American University as dean of the Graduate School in 1929 and remained there until he was appointed to the Interstate Commerce Commission.

In 1927 he acted as chairman of the board of arbitration between the Western railroads and groups of employees. That was his first public entry into the railroad problem, but his national reputation was made as special counsel to the House Committee on Interstate and Foreign Commerce in the holding company investigation of 1930-1931. The Splawn report on that investigation is widely known and has become almost a source book of information on railroad financial set-ups. He has written two books about railroads, one on the consolidation problem in 1924, and one on government ownership and operation in 1928.

THE brains trust member in the Commerce Department—it is noticeable that there is one in almost

PUBLIC UTILITIES FORTNIGHTLY

every agency and department—is Assistant Secretary John Dickinson. He is thirty-nine years old, has been a member of the Harvard and Princeton faculties, and at the time of his appointment was professor of law at the University of Pennsylvania Law School.

He came into the administration with the double recommendation of William G. McAdoo and Felix Frankfurter. He was once a law clerk in the offices of McAdoo, Cotton, and Franklin in New York, and later from 1922 to 1925 was associated with Mr. McAdoo in the practice of law in Los Angeles. At Harvard

he was a lecturer on government and he has written a book on "Administrative Justice and the Supremacy of Law" which he dedicated to Professor Frankfurter. In it he developed the "newer philosophy of social solidarity" as a proposed basis for legal procedure.

In the Commerce Department he acts as part of a general staff to work out whatever social and economic problems may develop. In this capacity he helped write the National Recovery Act, and has assisted in the outlining and the drafting of numerous other important pieces of legislation in the Roosevelt program.



Depends upon Who Does It

Student: "What is the meaning of this talk about writing up the books?"

Teacher: "Writing up the books is what bookkeepers do when they want the books to show any increased value of a company's property."

Student: "Have public utility bookkeepers ever done that?"

Teacher: "I should say they have. You must have heard about it."

Student: "Well, is it a bad practice?"

Teacher: "I have said it was done by some utility companies. Does that not answer your question?"

Student: "But is not the Federal government going to write up its books when it makes a couple of billion of dollars profit by manipulating its money?"

Teacher: "I suppose so from the talk about Federal profits."

Student: "Is that wrong too?"

Teacher: "Young man, whether an act is right or wrong, in the opinion of our political leaders, often depends upon who does it."

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

HUGH S. JOHNSON
National Recovery Administrator.

"I think it is about time to close up our umbrellas."

DANIEL C. ROPER
Secretary of Commerce.

"The motto needed is, 'Back to normal ways as quickly as possible.'"

DANIEL O. HASTINGS
U. S. Senator from Delaware.

"While I love the Senator (Norris) from Nebraska much, I fear him more."

GEORGE W. NORRIS
U. S. Senator from Nebraska.

"Private power development always tried to keep the supply a little behind the demand."

REV. CHARLES E. COUGHLIN
Prominent Catholic radio lecturer.

"I firmly believe in private ownership. I am firmly convinced that there is not enough private ownership."

NORMAN THOMAS
Socialist Candidate for President, 1932.

"The TVA is a beautiful flower planted in a garden of weeds—the only genuinely socialistic project in the New Deal."

DR. JAMES C. BONBRIGHT
Professor of Finance, Columbia University.

"Regulation of utility companies in this (New York) state, as in most other states, has been regulation in name rather than in fact."

JAMES P. WARBURG
Vice Chairman, Bank of the Manhattan Company.

"My criticism of the Securities Act is, in the first instance, that it does not go far enough, and in the second instance, that it goes too far."

DONALD R. RICHBERG
General Counsel, National Recovery Administration.

"The National Recovery Administration is not seeking to establish a dictator or a group of dictators of industry, but is in fact moving in precisely the opposite direction."

JOSEPH B. EASTMAN
Federal Coördinator of Transportation.

"There is reason to believe that many of the dangers which are ordinarily seen in public ownership and operation can be brought under control, if suitable precautions are taken."



STRIKING ACROSS LOTS IN

The Valuation of Fixed Assets

A discussion of the new idea for the simplification of rate problems, as advanced by certain of our public service commissions.

By K. LEE HYDER

WHEREVER its ultimate destination, the Federal administration appears to be passing up the well-paved streets and striking "across lots."

The hazards of the terrain are disregarded. Weeds, well-tended gardens, and high board fences have no terrors for this juggernaut; and if it is later found necessary to repair the damage or perhaps to attempt the covering of the trail,—well, it's no use to worry about that just now.

This breath-taking disregard for the ordinary proprieties, this shattering of the precedents slowly evolved over the past decades, is most disturbing to our state public service commissions, and they are beginning to sense the possibilities of things yet to come. While only an ominous shadow at the moment, the menace of Federal regulation is rapidly gaining substance, and it is high time that something be done about it. So argue the commissions.

In effect they are in the position of

the small boy who decides the game isn't just to his liking and in a feeling of pique wants to pick up his blocks and go home, but is afraid that if he does, the game will go on anyway without him.

Now there is ample cause for worry. There is no doubt about that. The Securities Act of 1933 opened the attack. It was a shotgun charge directed generally toward the interstate financial activities of all corporations. It only incidentally embraced the public utilities. But it looks as if the rifle fire is coming next, with the quarry even now being surrounded. State lines are not as clearly marked as they used to be. Altogether the situation is getting decidedly out of hand.

In the meantime the record of the state commissions doesn't look so good, certainly not strong enough to weather a sustained attack; hence a sudden enthusiasm for more and better rules, short-cuts in investigations,

PUBLIC UTILITIES FORTNIGHTLY

and even the hasty strengthening of laws that may be more readily and strictly enforced.

Sifting it down, it is apparent to all concerned that the chief criticism of the system of utility regulation by the states is not of the system itself, but rather of the ponderous machinery employed. By far the most cumbersome of this machinery (as admitted by both the commissions and the public utility interests) is that devoted to the fixing of value for rate-making purposes.

It is generally admitted further that "present" value must continue to be determined, whatsoever the weight accorded to it in the final rate base. This in turn demands the finding of the cost of reproduction new and its foundational requirements in the detailed appraisal inventory. Here is the *raison d'être* for the heavy machinery. If we must have it, cannot this slow-speed equipment, with the accompanying heavy operating cost and overhead, be replaced with something simpler and more efficient that will do the same or more work just as accurately in far less time? The engineering laboratories are already working on the order. The "Continuous Inventory Plan" is the initial offering. The design calls for a machine of many parts, but which, once assembled, will roll along under its own power, complete its work automatically, and thus eliminate not only the cost of the fixed foundation of the old type, but also the waste in bringing up the raw materials.

The chassis of this proposed machine for valuation comprises an initial classifying, breaking-down, and rear-

ranging of the *original* cost of fixed assets into material and labor groups and items in such form as may permit the later application of cost-indices quickly to develop the comparable reproduction costs as of subsequent years. Once this chassis is properly fabricated, the assembly can be undertaken.

THE power plant is to consist of a work order, accounting system of proper size and balance to furnish the sustained power and speed demanded by the specifications.

The body, wheels, and accessories are to be real innovations in comfort, style, and ease of control. They will be provided by joint committees selected from both the commissions and the public utility interests. The steering will be simplified through "across-the-table" conferences. Thus will a further saving in the time and expense of legal controversy be made.

The motive fuel? Oh! Well, the utilities will furnish that as heretofore; in fact that's the only part of the old machine which remains. But don't forget. It is to do lots of work on a gallon!

Now, of course, this idea isn't really new. Most of the larger utility corporations in the country today have some kind of continuous check or control of fixed property inventory and valuation in addition to the mere setting up of the property under a specified classification of accounts. Indices and trends in construction and equipment costs are carried forward by many companies, and the work order system is almost universally adopted in plant extensions and replacements.

PUBLIC UTILITIES FORTNIGHTLY

WHEN the last Congress repealed the recapture provision of the Transportation Act, the Interstate Commerce Commission had already gone a long way with the idea, working in conjunction with the President's Conference Committees of the Railroads in developing cost-indices and "period" factors for application to the underlying "19-A" valuations.

The innovation consists primarily of:

1. The acceptance for rate making as well as other purposes of an estimate of the cost of reproduction new based simply upon the application of cost-indices against the original costs, thus avoiding periodic reappraisals; and

2. The joint Commission-Utility Committee idea. The initial classifications are to be designed for the further purpose of computing annual charges to the reserves for depreciation expense, using the "original" cost or the cost of reproduction new as the base, depending upon the doctrine adopted by the particular commission.

Is this plan practicable?

THE theory, it will probably be admitted by everyone familiar with the difficulties of rate making, is excellent. There is no logical reason why an item or a group of similar items installed in one year at a certain cost cannot be accurately appraised for a later year by applying a proper

cost index. If the number of barrels of cement required for a large construction job were determined, the cost of a like number of barrels in another year could be computed immediately. The number of hours of labor for each class might run into many thousands; but once the relative wage scale were determined, a student of the sixth grade could quickly find the answer for the subsequent year.

But—assuming this were accomplished—does the answer necessarily mean the cost of reproduction new? I think not. Let us follow the plan through the several steps and see how it is going to work out in actual practice.

We are to start with the original cost.

Right there the first difficulty arises. What is meant by "original" cost? The public service commission of the state of New York has perhaps gone further with the foundational work for this plan than any other state commission. It has now issued a new Uniform System of Accounts for several classes of utilities with accompanying orders making such systems effective as of January 1, 1934. These constitute the most elaborate and detailed accounting control systems yet undertaken, and while the systems and orders do not specifically embrace the idea of the cost-indices method of fixing the cost



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PUBLIC UTILITIES FORTNIGHTLY

of reproduction new, the classifications and grouping of plant items are obviously designed in part for and are susceptible to such application.

THE New York commission *does* define "original cost," as expressed in the following language:

"Original cost" means the actual money cost (or the current money value of any consideration other than money) of property at the time when it was first devoted to the public service whether by the accounting company or by a predecessor public utility.

That's definite enough. It isn't to be what the *accounting company* paid for it, but what the *original builder* paid for it, and presumably it makes no difference whether it was constructed piecemeal of used materials in the late 90's or as a single project under contract at "cost-plus" in the early 20's.

Under this plan of "continuous inventory," therefore, the loss sustained by a contractor through an underestimate or excess costs incurred through the extreme labor inefficiency of the early post-war years would be retained perpetually in the valuation and the rate base. In theory, therefore, the idea fails at the start, since the conditions under which the reproduction of the later years would be carried on would differ and, as a result, the application of a proper rate would produce an unsound answer.

THE true theory, of course, would be to start with the *fair* or *normal* cost, determined upon an historical basis, and then develop indices that would give effect to changed conditions, recognizing relative labor efficiency, developments in the art, and similar factors that influence con-

struction costs, as well as the actual price changes.

There is the initial practical difficulty in determining the original cost at all where no records were retained or are available. Many extensions of utility systems constitute in part the acquisition of either old plants, more or less obsolete, or those wherein the going business was included as a part of the purchase price. The actual price might have been and usually was greater or less than the normal cost of reproduction new as of the date of acquisition. If this basic concept of "original" cost (that is, the cost when the property was initially placed in service) is to be rigorously adhered to, then the first cost¹ of the chassis of our machine is going to be tremendous, and incidentally its weight may increase the fuel consumption or reduce the mileage.

ANOTHER thing about this so-called "original" cost that is so often overlooked. The first costs of many items of property are ultimately changed by the process of minor replacements of parts.

In the course of time the original costs are actually increased or decreased by such accumulations of capital so replaced, regardless of the method of accounting for such costs upon the books of a company. If it were possible to determine "original"

¹ Testimony covering the estimated cost of compliance with the proposed Uniform System of Accounts was introduced by various witnesses at the hearings before the public service commission of New York during 1933. It was estimated, for example, by a witness of one of the larger utilities, that the cost of the initial inventory required would be upward of \$7 per thousand of investment, and that \$2 per thousand annually thereafter would be required to maintain the system.



Continuous Inventory to Shorten Rate Cases

THREE is considerable merit in some plan of continuous inventory. It would be welcomed by the public utilities who are finding the maintaining of their property records an ever-increasing burden. The public is demanding that regulation produce some practical results and is becoming more and more exasperated . . . at the long drawn-out investigations and litigation accompanying every rate inquiry."

cost, therefore, as defined by the New York commission, such figure might be no proper measure of the actual money outlay represented in the items as they currently exist, and therefore not *original cost at all*.

Next, if we adopt this plan, what are we going to do about "piecemeal" construction? This condition exists to a more or less extent in virtually every public utility property.

The public service commission of Wisconsin is now making a definite study of the plan and perhaps has advanced further than other commissions in attempting to outline its application to rate making. This Commission has recently issued a bulletin to the electric, gas, and telephone utilities in the state entitled "The Continuous Inventory Plan for Fixed Capital Records" which discusses the subject at some length. There is a fundamental difference in the Wisconsin plan in that this commission

proposes "historical" cost as a basis, meaning by that, it may be assumed, that in the absence of readily obtainable original costs the fair or normal cost at the date of original construction or acquisition may be used.

SUCH historical costs will be used to develop the cost of reproduction new year by year by the application of what are termed "cost-time factors." In addition, it proposes that the "wholesale" principle be injected into the initial study; that is, that excess costs due to piecemeal construction be eliminated.

While the Wisconsin plan appears to be more logical in theory, it still falls down in certain particulars. Assuming that the costs of setting up the base were not prohibitive, we would finally obtain an "historical" cost of a more or less hybrid variety.

Most of the utility properties represent a gradual growth and combine

PUBLIC UTILITIES FORTNIGHTLY

contract and company work. Furthermore, operations are going forward during the periods of plant extensions, and such extensions in total frequently constitute the larger portion of the entire property. If this piecemeal construction is to be eliminated, then, by the same token, contract labor costs should be substituted for plant labor costs, contractors overhead for company stores and similar expense, and general overhead costs absorbed in operations should be determined and restored to the "historical" cost base.

AND after all of these adjustments, what would we have?

Nothing more than a theoretical property priced on a "wholesale" basis as though constructed as a single project but with these prices varying with every work order throughout the life of the property. The job would be big enough if the book records were assumed to be correct, but if these records were to be actually reconciled with the physical property, then the task becomes so monumental as to defeat every worthwhile purpose, and the plan would fail by its own weight.

There is considerable merit in some plan of continuous inventory. It would be welcomed by the public utilities who are finding the maintaining of their property records an ever-increasing burden. The public is demanding that regulation produce some practical results and is becoming more and more exasperated, not so much perhaps by the rates for public service (although, of course, these are always too high in the public mind), but more particularly at

the long drawn-out investigations and litigation accompanying every rate inquiry. This same public is giving more serious consideration to the taking over and running of the utilities, and is in the frame of mind to hear better the arguments of the "fors" than the "againsts." Behind it all looms the spectre of Federal regulation that in these days of shattered precedents is more than a possibility.

GETTING right down to brass tacks, there is no sane reason why an accurate inventory, once established upon some definite price base and currently maintained, cannot be "rated" to the prices and conditions of subsequent years to produce a reasonably accurate figure for the cost of reproduction new. The practical and sensible manner of starting this, however, would be to go to the property itself; prepare the underlying inventory irrespective of the books of account; then use the books and other records and information for evidence of dates of acquisition; and thereafter price such inventory upon the "historical" basis, using the "wholesale" method with "normal" costs as of such dates, or the "original" if such costs were available and would properly apply.

The perpetuation of the practical worth of such an inventory, and in fact the justification for the first investment, would be dependent upon a correlative annual engineering audit of property changes. No system of pure accounting could do this. It will require the constant day-to-day engineering supervision and analysis of the material and labor costs as incurred in subsequent construction.

PUBLIC UTILITIES FORTNIGHTLY

WORK orders must be broken down at the property, not only in accordance with the special classifications of account but scrutinized and segregated as between new capital expenditures, actual replacements (with accompanying retirements determined), and pure maintenance expense.

We do not need to theorize upon the workability of this method, as it has already had a practical and successful test. Witness the magnitude of the "retrospective" valuations prepared and used to determine invested capital for income tax purposes as carried out through the Bureau of Internal Revenue of the Federal government during the high tax years.

A machine for continuous valuation, designed and constructed under such plans and specifications, should function smoothly and efficiently, and thus justify its first cost. The same operator would be able to run it satisfactorily and thereby hold his present job. And jobs aren't easy to find these days.

After all, even under the premise that "present" value is controlling, consideration of many other things besides the cost of reproduction new of the property is required in the function of rate making.

The depreciation to be deducted and the method of its determination, the intangible property, the justifiable rate of return to capital, the accounting for depreciation expense, and other factors, are certainly of equal importance and subject to a wider range of opinion and judgment. Their development and presentation may be more quickly accomplished, but they have at least as great an effect upon the final result.

Extreme accuracy in the cost of reproduction new is an unnecessary refinement,—provided the courts can be sold on the idea. The "stipulation" of the physical property inventory and costs between the commission and the utility would eliminate this final hazard and unquestionably result in the speeding up of rate investigations.



Less than half a century ago the greatest travel achievement was Nellie Bly's trip around the world in seventy-two days. Now a round-the-world trip in thirty-eight days of actual traveling or fifty-seven days with stop-over privileges is a regularly scheduled tour. The start is at Seattle, then down the coast to San Francisco and Los Angeles, then east across country by airplane via Dallas, Atlanta, Miami, Hayti, Porto Rico, Trinidad, and on south to Pernambuco, Brazil. There passengers transfer to the Graf Zeppelin and are transported across the Atlantic to Seville, Spain. From that point the tour continues by airplane via Marseilles, Naples, Athens, Bagdad, Calcutta, and Saigon. At Saigon a steamer connecting with Hongkong crosses the Pacific, completing the world circuit at Vancouver, a few miles from the starting point. "The world do move," as well as the folks who live in it.

What Others Think

A Foul Ball into Left Field

GEORGE Macaulay Trevelyan, in his recent novel "England under Queen Anne," made known to us interesting historical facts concerning Dr. Sacheverell, a divine of the Anglican Church during the reign of the "Good Queen." It appears that the learned doctor in 1709 preached a sermon that aroused widespread fear for the safety of the state Church and excited the hostility of the dissenters. The controlling Whig government hauled the reverend doctor on the carpet and, after severe cross-examination, had him impeached before the House of Commons on a charge of "malicious and seditious libel." A sentence suspending the doctor from preaching for three years resulted and his sermons were consigned to the flames.

Yet the loquacious and discredited Dr. Sacheverell, upon whom the governing officials heaped so much scorn and ridicule, is accredited by Mr. Trevelyan with causing the downfall of the Whig ministry. During the years of his enforced official silence in the pulpit, he made a highly successful barnstorming tour of the country in what amounted to a Chautauqua circuit of his day. When his sentence expired, a Tory ministry, then in office, obtained from the Queen his appointment to the rectory of St. Andrews, Holburn, "a desirable post" where, it is recorded, he ended his days pleasantly enough, fighting with his parishioners instead of Government and Commons.

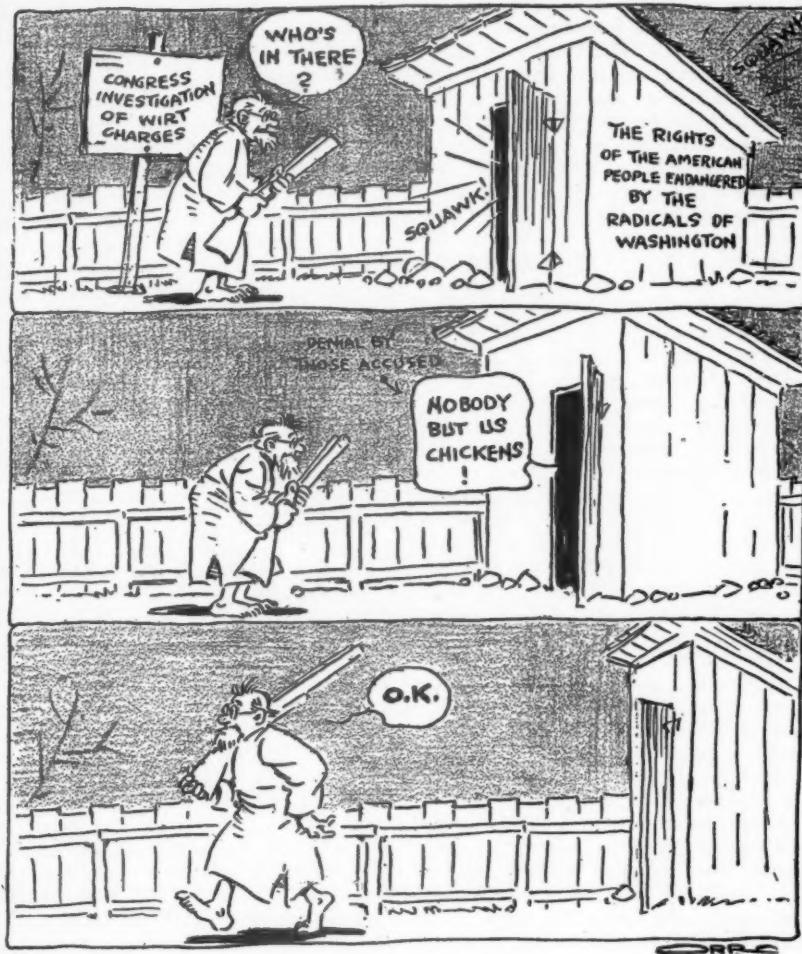
HERE may prove to be an analogy between the case of Dr. Sacheverell and the modern case of Dr. Wirt, Indiana school superintendent, whose sensational charges of radical conspiracy in high places were recently digni-

fied by a special investigating committee of the House of Representatives. We do things somewhat differently in 1934 as compared with 1709. Dr. Wirt will not be punished (although a contempt sentence was vaguely threatened if he should refuse to testify). His numerous letters and "memoranda" will not be made a bonfire on the plaza before the dome of the Capitol. But Dr. Wirt has been tried in the modern way and the consensus appears to be that the evidence of his specific charges has been found wanting.

Will this be the end of Dr. Wirt? Time will tell. Many veteran observers in Washington agree that the effect of the Wirt testimony may be to focus the attention of the country upon the direction in which the administration is moving—if any. Congressmen feel tangible evidence of this sudden scrutiny of the government by the folks back home in the form of letters and telegrams from the hinterlands.

JAMES McMullen, writing from New York in the "National Whirligig," called attention to the fact that the Committee for the Nation's circularization of the famous Wirt "whither-are-we-drifting" pamphlet has been surprisingly large in volume and more than 50,000 requests for extra copies had been received with the demand growing. This does not mean, of course, that the public is really taking Dr. Wirt's specific charges seriously, but that amount of reading matter once distributed simply must have the effect of turning some readers' minds to a subject which they had not in many cases even considered—namely, what is the ultimate goal of the present administration's experimentation? The *Des Moines*

PUBLIC UTILITIES FORTNIGHTLY



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"SOMEBODY'S BEEN STEALING OUR CHICKENS"

(Ia.) Tribune states the typical attitude about as succinctly as any commentator:

Disregarding all the absurdities involved in the Wirt charges, disregarding the possible motives of the little crowd of inflationist-industrialists that he has been associated with, disregarding even all our individual political biases, this open debate about changes is democratic and sound.

Whether Wirt be a cagey tool of still cagier men who wanted a "scare issue" raised or whether he be just the simple, jittery soul that some would picture him, is inconsequential.

We are going to debate things between now and next November.

The period of nondebate is over.

That some of the debate may be wild, passionate, and idiotic goes without saying.

But we are going to debate.

That is good.

PUBLIC UTILITIES FORTNIGHTLY

THERE is in this an aspect of vital concern to all interested in public utility regulation. Dr. Wirt said nothing and did not say that anybody else had said anything expressly about utilities or their regulation. However, Representative McGugin, of Kansas, a sympathetic Republican member of the Wirt investigation committee, demanded on the floor of the House that the investigators call upon Public Works Administrator Ickes to explain why he is using PWA funds for purposes (including the building of publicly owned hydro-power projects) heretofore rejected by Congress.

Is the executive branch of our government, functioning through a single administrative deputy, destined to supplant without restriction the legislative branch as the keeper of the public purse strings? Legislation which required years in the making, including approval by the Senate, the House, and the President, was necessary before the government started either of its two great ventures into the electric business—Boulder Dam and Muscle Shoals. Yet the nod of one man was sufficient to embark the government upon the Grand Coulee project—potentially greater than the other two combined and one upon which Congress itself had turned a cold shoulder.

Representative McGugin also wanted to have Tennessee Valley Authority Chairman Morgan called to explain whether the TVA plan is being used to nationalize industry and socialize the population of the Tennessee valley. Of course, Representative McGugin got nowhere with his request because of the force of the opposition but there is an indication here of what the politicians are thinking about for election issues next November.

WHEN one analyzes the import of Dr. Wirt's innuendoes in the light of what Dr. Tugwell and other reputed members of the brains trust have published, it appears that Dr. Wirt is merely proclaiming as a *quasi* seditious secret matters which many of the brains

trusters proclaimed publicly enough for some time. Dr. Wirt fears that they care little about our traditional constitutional principles. Dr. Tugwell went further than that in his textbook edited for high-school students. Speaking of prevalence of emotional attachment to the "instruments of social life" as against an "attitude of intellectual experimentalism," Dr. Tugwell warns his high-school readers:

An illustration of such feeling is the unreasoning, almost hysterical, attachment of certain Americans to the Constitution.

In another work Dr. Tugwell says mighty plain things about his regard for big business trying to live under the same flag with social planning:

Successful economic planning involves the encouragement of industrial development along socially useful lines, based on the recognition that the social utility of an industry cannot always be determined by its ability to yield private profits.

Planning involves public participation through government in the distribution of capital among industries, by means of taxation, regulation of profits, and in various other ways.

BUT because these writings have been embalmed in highbrow books which the average man back home might regard as pretty dull reading, political critics of the New Deal had failed to interest the masses in a Rough-on-Reds issue. Democratic Frank Kent has been beating the tom-toms of alarm in his columns in the *Baltimore (Md.) Sun* these many weeks. Likewise has Republican Mark Sullivan assumed the mournful rôle of Prophet Jeremiah in the *New York Herald Tribune*, and Independent David Lawrence—the tragic and mysterious tones of Prophetess Cassandra in the *United States News*. But it took the Hoosier schoolmaster, Dr. Wirt, to make the headlines. The Roosevelt-Kerensky metaphor may seem ridiculous to the Washington sophisticates but it was just the dramatic touch necessary to attract the attention of the Main Streeters.

Washington observers seem to be divided in their opinion as to the long range reaction to the Wirt testimony.



Newark Evening News

GETTIN' NOWHERE FAST!

Many predict that it will act as a brake upon the Left tendencies of the administration. Others justify all that the New Deal has done in the name of emergency and recovery. They say that it has been necessary to take all these steps and may be necessary to take more just to keep up the progress already made towards recovery; once we are on firm ground, we are told, it will be time enough to back-track or worry about delicate points of constitutional prerogatives. The brains

trust, it is pointed out, is not nearly so radical as many members in Congress. Secretary Wallace, for example, may look very much Left to the Wall Street gentry, but he is considerably to the Right of Senator Thomas of Oklahoma.

It recalls the question of little Alice in Wonderland who breathlessly asked the Red Queen where they were running so quickly. She was informed that Wonderland was such a fast-moving country that it is necessary to move

PUBLIC UTILITIES FORTNIGHTLY

very quickly just in order to stay in the same place. America today is a Wonderland. Events do move with amazing rapidity. The Left of yesterday is the Middle of today and the Right of tomorrow. It is a fast-moving statesman, indeed, who can manage to stay Left of the bulk of political progress.

CONCERNING the merits of the specific Wirt charges the less said the better. Few can doubt the honesty, integrity, and patriotism (in the broader sense, at least) of the group of intellectual advisors who have come to be known as the brains trust. Whether any one at the famous "near-by Vir-

ginia" dinner party was in fact able to catch Dr. Wirt in what Lord Macaulay would call "one of his brilliant flashes of silence" long enough to disclose plans to throw over the Constitution and the President after it, is a matter of relatively small importance.

In justice to Dr. Wirt, whether he be regarded as a gullible and garrulous neurotic, or a modern Paul Revere, there seems little doubt that he too is sincere and patriotic according to his lights.

Strange answers may yet come of the questions he has raised. Let us remember Dr. Sacheverell!

—F. X. W.

The Thayer Charges

RECENTLY *The Chicago American* gave some interesting, if unsavory, details about a bribery scandal in that city which purported to involve former Chicago utility operators. It seems, according to this story, that when Mike and Moe Rosenberg succeeded to their father's modest but profitable junk business, Mike, the older brother, got a business inspiration. It is said that he visited various gentlemen and put before them a "proposition" in substantially these words:

I know you have to bribe politicians, or you'd never get anywhere; they'd never let you tear up a street or get a franchise. Give me exclusive sale of your tons of junk copper, at my price, so I'll make a big profit, and I'll use most of the money paying public officials for doing what you want done.

It is further alleged in *The Chicago American* that a bargain was struck between Mike Rosenberg and the utility interests. When brother Mike passed away, Moe carried on in a big way, dispensing hundreds of thousands of dollars to various municipal officials in return for privileges to utility operators.

There is considerable doubt about the accuracy of the story, principally because it was based for the most part

on testimony given by way of explanation in response to Federal income tax investigations into the net earnings of the Rosenberg junk business. More significant, however, is the reaction to this story of the nationally known Hearst editor, Mr. Arthur Brisbane. Commenting in his column in the *Washington (D. C.) Herald*, Mr. Brisbane stated:

It is a fact, well known, that operating utilities companies in big cities usually involves use of bribe money by the companies. It has been so for generations.

The man that bought from New York aldermen the right to build the first street railway on Broadway, stuffing large bills into the overcoat pockets of aldermen, and going to jail later, said, pathetically, and truthfully:

"If I hadn't bribed the aldermen, I couldn't have built the road, and the city needed it."

Respectable gentlemen that ingeniously supplied the Rosenberg junk dealers with hundreds of thousands of dollars, by selling copper below its value, would probably tell you, haughtily:

"We have to bribe those scoundrels, or we couldn't exist."

Admitting the excuse to be good, which it is not, does it not suggest that private individuals should not own natural public monopolies, finding themselves under the painful necessity of bribing public officials? Public ownership need not involve bribery.

PUBLIC UTILITIES FORTNIGHTLY

The United States post office maintains no bribe-giving Rosenbergs.

RECENT revelations of the Federal Trade Commission involving alleged misconduct of a New York state senator and certain utility interests have aroused considerable interest at Albany and elsewhere. It is interesting to note that Senator Norris (R.), of Nebraska, reacted to these disclosures somewhat similarly to Mr. Brisbane. "The only ray of hope," the Senator is quoted in the press as stating, "for combating the universality of activities that exists in nearly every locality in the United States is public ownership."

Some days later Senator Norris stated on the floor of the Senate:

There is not a state capitol where such tactics are not used. And it is not limited to state legislatures, but extends to the Federal Congress as well.

How many other men does that power trust have in the New York legislature? How many key men do they have in other legislatures all over the United States? These cases show how the power trust is guarding every avenue that might possibly injure it.

CONCEDING the point that there is no justification for utilities to bribe public officials even in doing what the latter might regard as acts necessary for the interest of the public, it does seem that there is a decided flaw in the reasoning that public ownership should therefore follow. Let us reduce the steps in this argument and conclusion to analytical form: (1) Assuming that utilities have to bribe dishonest government officials (2) in order to engage in rendering public service; (3) therefore, the only escape from the evils of such corruption is to (4) place utilities under the management of government officials. To avoid the logical objections on grounds of *non sequitur*, we must assume that there is some force (magic or otherwise) in public ownership which automatically renders the officials more honest and devoted to public interest as utility operators than as utility regulators. However, this proposition that because regulated utili-

ties (subject to still further control) are suspected of corrupting politicians, the utility business should be turned over to unregulated politicians is not a brand of logic that will stand the test of mature deliberation. Nor can we appeal to *vox populi*, as evidenced through the election ballot, as the supreme guide in this particular problem. For if the voters cannot elect honest officials to regulate utilities, how can they elect honest officials to manage them—unless, as before suggested, there is some magic force in public ownership which instills governmental morality.

CLOSE observers of the behavior of the present Congress will find little apparent support for Senator Norris' charge that the utilities as a single organized interest have much influence on Capitol Hill today. Where were the utility hirelings in Congress when the Tennessee valley legislation was passed? Where were they when the Federal power tax exempting municipal plants was passed? Where were they when the Federal Power Commission rate and power survey resolutions were passed? These and a number of other enactments directly or indirectly adverse to private interest in utility industries were passed by the present Congress by wide majorities—in some cases without even a record vote. The conclusion from these facts is inescapable that if the utilities have invested in corrupting Congressmen they certainly have wasted their money.

It is also true that if there has been any attempt to influence state legislation by the use of money, the results have not been very satisfactory from the utility standpoint. It is always easy to make statements of corrupt legislative activity, and, if these statements are readily believed without proof, it does not speak well for the reputation of legislatures for integrity. But, if the proof of the pudding is in the eating, it is apparent that proutility legislation could scarcely have been bought because there has been none of it for a period of years. It has been the antiutility

PUBLIC UTILITIES FORTNIGHTLY

groups which have been constantly asking for legislation, not the utilities.

That there has been resistance by utilities on behalf of their stockholders to hostile legislation goes without saying, but this resistance has largely been futile in the states as well as in the nation. If money has been spent, it has been money wasted.

The situation in New York state is not an exception to this rule.

IN the turmoil at Albany which followed the "revelation" of the Federal Trade Commission concerning the Thayer letters, there was disposition to forget all about the real points at issue in the enactment of Governor Lehman's utility program. Doubtless there was much to be said for this program. Doubtless there was much to be said against it. But all argument on the merits of these important bills seemed to be completely drowned out and forgotten in the heated controversy over whether Senator Thayer did or did not have improper relations with a utility company back in 1927. There is grave danger that legislative voting in such an atmosphere is not as deliberate as it should be. As the *Electrical World* pointed out:

The resurrection of the Thayer letters from the files of the Federal Trade Commission has thrown the Lehman utility bills into the political forum. Their use for political purposes has gone far to undo the constructive testimony that showed the unfair features of the bills and has brought the pressure of antitrust politics to bear upon the legislature. These 1927 letters have nothing to do with the merits of the proposed legislation, yet they are used as the levers to force its acceptance. What about the 5 per cent return upon investment? What about the proposal to permit municipalities to build competing distribution systems without offering a fair price for the private utility systems? Why should the Thayer incident distract legislative attention from an intelligent consideration of these unfair features in the Lehman bills? But such is politics.

No electrical industry man condones any unethical relations that may have existed between Senator Thayer and the Associated Gas & Electric Company. The facts in this case are yet to be made available, however, it must also be granted that some

utility practices in 1927 are not those of 1934. This incident of the past should not be the agency to force unfair and confiscatory legislation upon the utilities of New York state.

LIBERALS of all stripes apparently welcomed both the cause and the effect decried by the *Electrical World*. To them the need for regulatory reform in New York is so urgent that if a scandal can put the governor's program across where argument fails to do so—then let the end justify the means. The same attitude is taken by those who welcome municipal ownership. Says *The Nation*, socialist weekly:

Thanks to the indiscretions of Senator W. T. Thayer of the New York legislature, it looks as if some of Governor Lehman's bills for the better control of public utilities might be enacted into law. Any legislator who opposes them will be in the unavoidable position of having to explain to his constituents how much he got and from whom. Of course, it is no novelty to catch a "representative of the people" in cahoots with some business interest that is trying to hornswoggle the public, but each separately adds to the total score, and the evidence which the Federal Trade Commission has presented should do something to forward the movement for municipal ownership of gas and electric plants all over the country.

The *New York Times* accepts the effect of the hubbub in stampeding the Lehman legislation through the New York legislature more philosophically. It editorially stated soon after the publication of the "Thayer" letters:

Already the disclosures have had the effect of spurring the senate public service committee to vote out the bills embracing the governor's twelve-point program. Speaker McGinnies rather ruefully remarks that while he would "like to see some of the bills amended," he "expects they will be passed without much opposition." He is evidently one of those students who have observed that the body politic often responds to irritation much as a child does, with the "all over reaction," thrashing about with arms and legs in all directions. Discrimination is still in order on some of the measures, notably the one providing for municipal ownership without consent of the public service commission. But the demand for the bills giving the commission more effective control over holding companies and affiliates, such as those in the Asso-

PUBLIC UTILITIES FORTNIGHTLY

iated system, should now prove irresistible. It is one of the minor ironies of the present incident that one of the most persuasive arguments for the grant of such authority to the commission is contained in a "Suggested Report for the Commission on Revision of the Public Service Law," submitted in 1930 by Senator Warren T. Thayer.

THREE was considerable discussion as to whether the investigation at Albany should be confined to a probe of Senator Thayer's relations with the utility interests or broadened to a general probe of the legislature, the utilities and, as some suggested, the public service commission as well. The *New York Times*, independent Democratic organ, already quoted, took the position that the investigation might well be restricted:

Attorney General Bennett, however, appears to have allowed his zeal to confuse these two purposes. He declined the judiciary committee's invitation to serve as its counsel on the ground that it would be "unfair to the public" so to confine its inquiry as to exclude an investigation into any "associations or transactions" Senator Thayer may have had either with the companies mentioned in the correspondence "or any other utility companies." That is hardly the function of the judiciary committee, whose job is not to engage in a fishing expedition but to pass on certain published charges affecting the honor of a member of the senate. It is the broader inquiry, into the public relations of the local utilities generally, which should be given the widest possible scope. By whatever body that investigation may be conducted, its effectiveness will depend largely on the quality of the man selected as counsel. Governor Lehman has expressed a desire to find somebody of the calibre of Chief Justice Hughes for the post. No narrow partisan or professional muckraker will serve. He should be a man "without fear and without reproach."

ON the other hand, the *New York Herald Tribune*, independent Republican organ, believed that a thorough and searching investigation should be made. It stated editorially:

Senator Thayer's personal fortunes, however, are of less importance than a searching investigation of the broad subject of alleged improper influence over the legislature by utility companies. The senator from Chateaugay probably will not be a

candidate for another term. But the broad question will continue to be a subject of rumor, speculation, and confusion until it is probed to the very depths in an investigation such as has been proposed.

The *Washington Post* saw in the sudden revival of startling disclosures by the Federal Trade Commission after many months of routine investigation, that had reached the stage of almost innocuous monotony, evidence of well-timed coöperation between Washington and Albany. It stated:

It may be a mere coincidence that these unsavory revelations, offered as evidence in an investigation that has been in progress for several years, coincide with an active drive on the part of the governor of New York to secure passage of a number of regulatory bills affecting the public utilities of the state. Nevertheless, the effect of the disclosures is to discredit the opinions of those who have valid and legitimate objections to offer to the governor's proposals. The public utility interests may, therefore, find themselves the victims of their former ill-judged efforts to influence legislative activities.

CERTAINLY there is no legal or moral justification for venal influence by utilities upon the legislative representatives of the people, whether in municipal, state, or national office. Further than that, if the Thayer investigation or other investigations make it clear that routine management of private utility service necessitates payment of bribes to government officials for the mere privilege of doing what is necessary in the interest of the people, that also might well be a matter for serious consideration of legislative reformers.

The fact, if it can be proven to be a fact, that politicians under the present state of the law have the disposition to obstruct the needs of public service unless and until they are paid a consideration is just as ugly a blot on the record of democratic government as evidence of bribery would be upon members of the utility industry if proven to have practiced it.

—F. X. W.

TODAY. Editorial. By Arthur Brisbane.
Washington Herald. March 17, 1934.

PUBLIC UTILITIES FORTNIGHTLY

REMARKS of U. S. Senator George W. Norris. *Congressional Record*. April 2, 1934.

POLITICS. Editorial. *Electrical World*. April 7, 1934.

EDITORIAL. *The Nation*. April 11, 1934.

THE UTILITIES INQUIRY. Editorial. *The New York Times*. April 5, 1934.

THE TWO INQUIRIES. Editorial. *The New York Times*. April 7, 1934.

GO AHEAD WITH UTILITY INQUIRY. Editorial. *The New York Herald Tribune*. April 6, 1934.

BRIBERY AS A FINE ART. Editorial. *Washington Post*. April 2, 1934.

Publications Received

AMERICA GOES SOCIALISTIC. An Interpretation of Our Government Drift. By Henry Savage, Jr. Philadelphia: Dorrance & Company, Inc. 1933. 146 pages. \$1.75.

KEMMERER ON MONEY. By Dr. Edwin Walter Kemmerer. Philadelphia: The John C. Winston Company. 1934. 197 pages. \$1.50.

RAILROAD MERGERS. By John W. Chapman. New York: Simmons-Boardman Publishing Company. 1934. 157 pages. \$3.

THE CHASE ECONOMIC BULLETIN ON THE PRACTICAL IMPOSSIBILITY OF A COMMODITY DOLLAR. By Benjamin M. Anderson, Jr. New York: The Chase National Bank. 1933. 28 pages.

THE DEVELOPMENT OF AMERICAN INDUSTRIES. Their Economic Significance. Planned and edited by John George Glover and William Bouck Cornell with a foreword by John T. Madden. New York: Prentice-Hall, Inc. 1933. 932 pages. \$6.

THE PUPPET-SHOW ON THE POTOMAC. By Rufus Dart, II. New York: Robert M. McBride & Company. 1934. 266 pages. \$2.50.

THERE OUGHT TO BE A LAW. A Collection of Lunatic Legislation. By William Seagle. New York: The Macaulay Company. 1933. 158 pages. \$1.25.

Other Articles Worth Reading

BASIC ELEMENTS UNDERLYING PUBLIC UTILITY CREDIT. By George E. Phelps. *The Economist*. January 12, 1934.

CONGRESS BOWS TO THE WHITE HOUSE. By E. Francis Brown. *Current History*. March, 1934.

DEPRECIATION ACCOUNTING IMPOSED BY NEW YORK COMMISSION. *Electrical World*. March 3, 1934.

DOWN TO THE SEA—CHEAPLY. An argument for the St. Lawrence Waterway. By Senator Key Pittman. *Today*. March 3, 1934.

EDITORIAL. IS IT A GOOD BUY? *The Wisconsin State Journal*. February 8, 1934.

FEDERAL CONTROL OF COMMUNICATIONS Telephony. March 3, 1934.

GET OUT OF THE DITCHES. By George Creel. *Collier's*. January 6, 1934.

GOVERNMENT TELLS 2,000,000 How to LIVE. An Authorized Interview with Dr. Arthur E. Morgan by Herbert Corey. *Nation's Business*. March, 1934.

ILLINOIS FINDS A WAY TO SPEED RATE ADJUSTMENTS. By Irvin Rooks and Harry R. Booth. *Electrical World*. February 17, 1934.

ISSUES AND MEN. By Joseph B. Eastman, Coöordinator. *The Nation*. February 7, 1934.

MILK . . . A PUBLIC UTILITY. By Wheeler McMillen. *The Country Home*. February, 1934.

OTHER PEOPLE'S MONEY. By John T. Flynn. *The New Republic*. February 7, 1934.

POWER WITHOUT PLUNDER. By Quentin Pope. *The New Republic*. February 7, 1934.

PUBLIC OWNERSHIP UNNECESSARY AND UNDESIRABLE. *Railroad Data*. February 9, 1934.

THE BLIGHT ON HOLDING COMPANIES. By John W. Hester. *Current History*. March, 1934.

THE UTILITIES AND DOLLAR STABILITY. *The Financial World*. February 14, 1934.

The March of Events

Rate Inquiry Bill Signed

PRESIDENT Roosevelt on April 14th signed the Norris-Rankin resolution directing a Federal Power Commission investigation of electric rates. Senator Norris (R., Neb.), and Representative Rankin (D., Miss.), the authors of the inquiry, were present at the White House when Mr. Roosevelt affixed his signature.

The order provides for an investigation of electric rates charged to residential, rural, commercial, and industrial consumers. Representative Rankin said:

"In my opinion it will do more to bring justice to the consumers of electric energy than any other step yet taken, with the exception of the passage of the Muscle Shoals bill. I predict that the publicity it will give and the discriminations and excessive rates it will reveal will result in a reduction in the costs of not less than \$50,000,000 a year. It may reach many times that amount."

Communications Bill Reported

THE Senate Interstate Commerce Committee reported favorably the administration's communications bill setting up a commission of five members for the regulation of the communications systems of the country. The proposed commission is divided into two sections, one of which handles radio and the other telegraph and telephone. One section of the bill extends authority to the proposed commission to make an investigation into transactions entered into by and between telephone and telegraph companies relating to the furnishing of equipment, etc., and to report back to Congress not later than February 1, 1935, as to whether additional legislation is desirable. The commission may also inquire into the management of the business of all carriers.

The bill as reported by the committee, with only Senator White (R., Maine) dissenting, provides not only for centralization of existing communications authority but the extension of regulation as well. The latter feature was vigorously opposed by the communications companies in hearings, according to *The Wall Street Journal*.

Favors RFC Loans

LOANS by the RFC would be made available to cities, towns, villages, and other

public corporations for the purchase of electric development and transmission plants now privately owned, under a bill introduced April 2nd by Senator Hiram Johnson (R., Cal.). The loans would be for 20-year periods, according to the *St. Louis Globe Democrat*.

Report Urges Wire Control

STERN and efficient control of the nation's message and word-sending systems by a new commission, whose first duty would be a thorough study of the American Telephone and Telegraph Company and other big companies and their subsidiaries, has been recommended by Walter M. W. Splawn, according to the *New York Herald Tribune*.

Mr. Splawn, recently appointed to the Interstate Commerce Commission, made the recommendations to the House Commerce Committee for which he had just completed a 3-year study of holding companies. He urged enactment of the pending communications regulation bill.

Mr. Splawn said the communications commission should have adequate regulatory power.

His report went exhaustively into the financial structure, practices, and trends of the large corporations in the telephone, telegraph, and radio fields. It was submitted a few days before the opening of committee hearings on the bill.

Truckers Favor Regulation

FEDERAL regulation of motor trucks is the objective of the newly organized National Highway Freight Association, which has established headquarters at Washington, D. C., according to the *Washington Post*.

The association of common carrier truck operators claims that the trucking code will not remedy the evils of highway transportation, recently pointed out by Railroad Coordinator Joseph B. Eastman. Its president is J. L. Keeshin, of Chicago.

"We are for Federal regulation of interstate commerce by truck," said Keeshin. "Under the trucking code we have all the disadvantages and none of the advantages of regulation. We must pay code wages and comply with code hours and regulations, but we get no protection against cut-throat competition and chiseling."

The association claims that "the trucking

PUBLIC UTILITIES FORTNIGHTLY

code is wrong in that it attempts to cram into one mold all forms of trucking, regard-

less of the great variations in the different types," the *Post* stated.



Alabama

Electric Rates Cut

A n estimated reduction of \$101,000 in commercial rates by the Alabama Power Company has been ordered by the Alabama Public Service Commission. The revision

came as a supplement to an original order calling for reductions of \$553,000 in annual rates to residential, rural, and cotton gins. The commission stated that approximately 20,000 commercial customers would benefit by the new order.



Arkansas

Phone Rate Cut Voted

CITIZENS of El Dorado by a vote of 580 to 330 recently adopted an initiative ordinance reducing telephone rates in that city by approximately 50 per cent.

The ordinance provides that the new rates are to become effective from and after May 1st, but John W. Carter, district manager of the Southwestern Bell Telephone Company, said that the matter has been placed in the hands of lawyers of the company to determine what course will be taken to prevent "the confiscation of our property in El Dorado."

Under the ordinance one-party service to residences will be reduced from \$3 a month to \$1.50; two-party service will be reduced from \$2.50 a month to \$1; business telephones will be reduced from \$5.75 a month to \$3.50.

and extension telephones would be \$1 a month each. The ordinance also provides that there shall be no installation charges.

Advised to Save Records

PUBLIC utility companies in Arkansas were warned to keep itemized records of the operating expenses chargeable to the ratepayers of the utility, and not to destroy records of such expenditures, in a letter written by P. A. Lasley, chairman of the fact-finding tribunal of the Arkansas Corporation Commission, according to the *Arkansas Gazette*.

Mr. Lasley said that after May 1, 1934, the tribunal will not consider any unitemized expenses in determining operating expenses of the utilities.



California

Council Votes Power Rate Cut

An ordinance establishing the new reduced electric rates recently recommended by the water and power commission of Los Angeles was presented to the Los Angeles city council on April 11th by Councilman Baumgartner and immediately adopted under suspension of the rules. If signed by Mayor Shaw the rates become effective June 1st, according to the *Los Angeles Times*.

The new monthly domestic rate schedule, which is designed to encourage the use of appliances, is reduced from 2 cents per kilowatt hour to 1½ cents per kilowatt hour after 175 kilowatt hours have been used.

A new rate of 1 cent per kilowatt hour is adopted for electric water heaters. A new schedule for basic industries, ranging between 4½ and 5 mills per kilowatt hour and

in some few cases as low as 2½ mills, also is established.

Utility Rate Cut Offered

An offer of an immediate reduction of \$1,050,000 annually in natural gas rates has been made by Pacific Gas and Electric Company to the railroad commission in exchange for the commission's dismissal of its present order cutting rates \$2,100,000 and elimination of that order's retroactive clause on which rebates now total \$1,500,000.

The commission took the offer under consideration until it meets in executive session, at which time a decision will be made whether a new rate case will be started against the utility. Indications are that the commission probably will accept the offer, according to the *Los Angeles Times*.

Colorado

Would Tap Underground River for Power

A MYSTERIOUS underground river, believed to have been formed many centuries ago by the uplifting of the Rocky Mountain plateau during the tertiary period, would be utilized to provide water for irrigation and power development under a plan which was sub-

mitted to the Public Works Administration.

According to data gathered by engineers, the river flows beneath Box Elder valley, a few miles north of Denver, and is not a part of any surface river system. Applications for a loan of \$92,000 with which to dig wells, and another for \$74,000 for the construction of fifty homes, declare the amount of water to be obtained is virtually inexhaustible, according to the Harrisburg *Evening News*.



Illinois

Utility Files Brief Opposing Electric Rate Cut

A BRIEF setting forth arguments as to why neither a temporary nor permanent reduction of the electric rates of the Public Service Company of Northern Illinois should be ordered has been filed with the Illinois Commerce Commission by attorneys for the utility.

The 101-page brief was filed in answer to the motion entered by attorneys for the commission asking a temporary reduction pending completion of an investigation which the regulatory body is conducting, looking toward a permanent rate ruling.

The Public Service Company serves 6,000 square miles of rural and urban territory in the Chicago area. It serves 321 communities. The company was among state gas and electricity purveying utilities which were cited several months ago to show cause why their rates should not be revised to conform to changed economic conditions.

Salient points in the answering brief, which

was prepared by Attorneys Harry J. Dunbaugh and David F. Taber, are that the aggregate valuation of the company properties is \$150,000,000 and that a fair rate of return on that investment as a rate base should be not less than 7 per cent. United States Supreme Court decisions are cited to justify the 7 per cent return.

In recent hearings which have been held before Assistant Commissioner Charles E. Byrne, the commission's lawyers, Irvin Rooks and Harry R. Booth, had experts testify that a fair property valuation would be \$125,000,000 and that a reasonable rate of return should be about 6 per cent, the Chicago *Tribune* stated.



Municipal Plant Rejected

By a vote of 2,204 to 1,811, voters in Urbana have rejected a proposal that the city construct, maintain, and operate a municipal light and power plant and distribution system which would have cost approximately \$650,000.



Indiana

Consumers Force Offer

THREATS by several large users of water in Huntington to drill wells and install pumps unless the city reduces water rates have brought a proposal to reduce the charge for

all water used over 100,000 cubic feet to 5 cents per hundred cubic feet, according to the Indianapolis *News*. The protest of consumers was made in February. The present rate is 10 cents per hundred cubic feet above 100,000.



Kansas

Commission Approves Lower Utility Rates

RATE reductions by three large electric companies operating in Kansas have

been approved by the state corporation commission. More than 100 towns and cities benefit by the commission's action, according to the Topeka *State Journal*.

The new schedules, which become effective immediately, apply to those consumers who

PUBLIC UTILITIES FORTNIGHTLY

use electricity for cooking and heating as well as for lighting.

The commission authorized the Kansas Electric Power Company to put into effect a schedule of \$2.50 for the first 35 kilowatt hours of monthly consumption, 4 cents for the next 55 kilowatt hours, and 2 cents for all additional.

The Western Light & Power Company's schedule reducing the top step to 10 cents where current is used for lighting and cooking was approved. It provides for additional reductions in lower steps and the minimum bill is cut about \$1 in most cases.

The Kansas City Power & Light Company was authorized to put into effect a new schedule in five eastern Kansas counties that would provide for the minimum bill to be 75 cents where large water heaters are used. The minimum has been \$2.25.

The Empire District Electric Company will reduce street-lighting rates for Baxter Springs, Scammon, Galena, and Weir under

the state corporation commission's approval. The commission also approved the reduction of telephone rates at Lamar from \$1.50 to \$1.25.

Organize Utility Group

CITY officials seeking lower utility rates for their communities have joined hands under the banner of the Utilities Fair Rates Association, of Kansas, according to the Topeka *State Journal*.

The association was organized recently at a meeting in Halstead attended by about 400 persons.

The association went on record as favoring abolition of the present rate structure laid down for utilities in Kansas, and the substitution of rates based "solely on actual valuations." It also favors a co-operative gas pipe line system for the state.



Kentucky

Rate Cut Plan Proposed

REDUCED rates for a limited number of consumers having what is termed "full residential electric service" were submitted to the Lexington board of city commissioners on April 9th by the Lexington Utilities Company and the Kentucky Utilities Company. The reduction applies only to residences having full electric service, includ-

ing an electric range of at least 5,000 watts.

Under the existing Lexington franchise, however, reductions in rates must be approved by the board of city commissioners. The question was not discussed at the regular meeting of the board. Mayor W. T. Congleton said the board would have to give further consideration to the matter before any action was taken, according to the Louisville *Courier Journal*.



Louisiana

Telephone Rate Fight Set for Hearing

THE statewide telephone rate reduction petition filed with the Louisiana Public Service Commission some time ago by Senator Huey P. Long assertedly on behalf of his political organization and weekly paper was docketed for hearing on April 12th.

The telephone case, initiated by Senator Huey P. Long as attorney for the Louisiana Democratic Association and the American Progress, seeks rate reduction by the Southern Bell Telephone and Telegraph Company of "not less than 30 per cent" and was set down for consideration on pleas and exceptions filed several weeks ago by the company, according to the New Orleans *Times Picayune*.

The telephone company submitted exceptions asserting that Long's petition was improperly filed in the name of "The American

Progress Publishing Company" since there was no company or corporation by that name, the correct name, the company said, being "The American Progress, Inc."

The company also contended that the Louisiana Democratic Association did not authorize the action, and that phone rates are less than reasonable.

Senator Long will have the opportunity at the hearing to correct any filing errors the commission may hold to exist, the *Times Picayune* stated.

Data on Utilities Requested

SEEKING fuller information regarding the administration personnel and service scope of electric and natural gas companies operating in the state, the public service commission has adopted a resolution calling for data from such companies regarding their officers, representatives, and territory.

PUBLIC UTILITIES FORTNIGHTLY

The resolution asserted that many company schedules in the files of the public service commission were out of date and inadequate.

The commission adopted the resolution at the opening day's session of a 2-day hearing

of numerous utility regulatory proceedings, including Senator Huey P. Long's statewide phone rate reduction petition, which it indefinitely postponed when no one appeared to press the case, according to the *New Orleans Times Picayune*.



Massachusetts

Edison Rate Hearing Ends

A HEARING started nearly two years ago on a petition of consumers asking for a reduction in rates of the Edison Electric Illuminating Company of Boston, was concluded at the State House on April 10th. The public utilities commission took the matter under advisement, and will announce its decision after going over the evidence, according to the *Boston Transcript*.

F. Manley Ives, general counsel for the Edison Company, in bringing his final argument to a close termed the request for a reduction from $7\frac{1}{2}$ cents to $3\frac{1}{2}$ cents per kilowatt hour absurd and ridiculous.

During the afternoon session former Senator Joseph J. Mulhern of Boston, one of the petitioners, presented allegations against the Edison Company and former Mayor Curley, and charged that Samuel H. Mildram, utili-

ties rate expert, was employed by both the Edison Company and the city of Boston by Mayor Curley, in a contract proceeding involving the company and the city.

Security Owners Should Unite

THE time has come, President Frank D. Comerford of the New England Power Association said, for holders of public utilities securities to organize to protect their property.

Speaking before the annual meeting in Boston, President Comerford said that during the depression the utilities industry had cooperated in maintaining employment and in aiding municipalities by prepaying taxes, and now deserved something better than "the persistent attacks which have been leveled at the industry," according to the *Detroit News*.



Michigan

To Probe Phone Rates

THE Michigan Public Utilities Commission has ordered an investigation of the rates of the Michigan Bell Telephone Company with a view to substituting the flat rate

for metered rates and eliminating extra charge for French phones. The investigation will include Detroit and rural services, according to an item in the *Wall Street Journal*. Hearing has been set for April 19th and 20th.



Minnesota

Council Seeks Larger Gas Saving

THE 5 or 6 per cent saving in cost of gas service which officials of the Minneapolis Gas Light Company hope to make available to their customers by introducing natural gas for mixing purposes will not satisfy members of the Minneapolis city council gas committee, according to the *Minneapolis Journal*.

Alderman William A. Currie, chairman of the committee, said he did not know what the reaction of the rest of the committee, which is made up of the entire council, would be but he had expected the company to offer a greater saving.

"I'm inclined to think the council will not accept the company's proposition," he remarked. "Personally, I don't think the saving is large enough and I know the people expect more."

The company made it clear the saving would not be in reduction of the rate by that amount but in furnishing gas of greater heating value.

The company officials also stressed the point that the figure of saving is entirely tentative, depending on negotiation of a contract with the Northern Natural Gas Company. If the deal is closed, the probable cut in the annual gas bill in Minneapolis will be \$300,000, the company officials said, according to the *Minneapolis Journal*.

Missouri

Valuation Increase May Raise Rates

A PROPOSED increase of 600 per cent in the assessed valuation of the property of the St. Louis County Gas Company might make it necessary for the company to apply to the Missouri Public Service Commission for an increase in rates, Albert C. Laun, real estate agent for the company, told the St. Louis county board of equalization at a hearing on April 6th, according to the *St. Louis Globe Democrat*.

The board is also expected to hand down a ruling on the question of assigning the entire tax levy on the St. Louis County Water Com-

pany to the Lake school district. The raising of the gas company levy was planned to compensate other school districts for the loss of a share in the water taxes.

Last year's assessment of the gas company property was on a basis of \$571,520 valuation. It is proposed to increase the valuation to \$3,900,000. Laun testified that the lower figure was the proper valuation, although the valuation for rate-making purposes is \$6,500,000 of which, Laun said, \$3,843,000 is nontaxable, while the remainder in excess of the present assessment valuation is represented by deductions for depreciation, leaving a total value of \$1,464,100, of which only 40 per cent is assessable.



New York

Mayor Seeks Rate Cuts

LOWER electric and telephone rates are to be sought for New York city by Mayor La Guardia, according to the *Wall Street Journal*. The mayor admitted at Brooklyn borough hall that he is planning a fight against the city's utilities but would not divulge his plans. "The utilities," he said, "are too resourceful. They may read between the lines."

Coincidental with the mayor's intimation on rate matters he disclosed that the corporation counsel had been directed to make a study of the perpetual franchises granted to the two main conduit companies in New York city, the larger of which is owned by New York Edison Company and the other by the New York Telephone Company.

Should a study of those franchises reveal that the conduit companies had not adhered strictly to their contract, the mayor is seen as having a potential weapon with which to force utility rate concessions, the *Wall Street Journal* stated.

Until the administration strategy has been fully developed, the mayor made it clear he would not reveal any of his plans.

Lehman Public Utility Bills Pass Legislature

ALL of Governor Lehman's public utility program bills, two of which he had succeeded in forcing through the Democratic senate by the slenderest of majorities and only by the most strenuous use of party pressure, have been passed without change by the Republican assembly by overwhelming votes. The utility bills passed, all of which had

previously passed the senate, were as follows:

A bill empowering municipalities to establish and operate gas and electric plants, passed 97 to 49.

A bill authorizing the public service commission to engage temporary employees to expedite its work, to assess the cost against the utility companies investigated, and appropriating \$300,000 as a revolving fund to finance the process, passed by 109 to 38.

A bill requiring utility companies to pay consumers' deposits into the state treasury, if unclaimed after fifteen years, passed by 120 to 27.

A bill requiring the public service commission's consent to use of utility revenues for any other than usual business expenses, to prevent improper intercompany loans, passed by short roll call.

A bill permitting village lighting systems to supply power outside village limits, with commission approval, passed by short roll call.

The municipal ownership and revolving bills and the bills authorizing rate cuts, were among those most strenuously opposed by the public utilities companies and investors whose opposition had been aroused through letters from company officials, the *New York Herald Tribune* stated.

The bill giving the public service commission power to order temporary rate reductions with the only limitation that utility corporations affected by such orders must be allowed a 5 per cent return, passed 99 to 48.

A bill empowering the commission to charge fees of from \$5 to \$500 for various services and publications of the commission, passed 130 to 8.

The senate on April 19th passed a bill requiring public utility corporations to let through public bidding all construction contracts involving expenditures of \$25,000 or

PUBLIC UTILITIES FORTNIGHTLY

more in any one year. This bill was amended so as to exempt contracts made for maintenance purposes.

The assembly unanimously concurred with the senate in adopting a resolution providing for a statewide probe of public utilities.

Bill to Revise Transit Board

UNIFICATION of New York city subways would be submitted to the board of transportation by a bill prepared for introduction in the legislature, according to *The Wall Street Journal*. The bill, drafted as an

administration measure favored by Mayor La Guardia, would reorganize the board as the board of transit.

Statutory unification and administrative powers, now vested in the transit commission, would be vested in the board which would retain its present powers as well. The transit commission would be reorganized as the metropolitan division of the public service commission with regulatory powers over all utilities in the five counties of New York city, Westchester, Nassau, and Suffolk.

Maintenance of the commission would be assumed by the state, and it would be exclusively a state regulatory body.



North Carolina

Voluntary Gas Rate Cut

A REDUCTION in domestic rates of the Carolina Central Gas Company of Hendersonville, effective with the April 1st meter readings, was granted April 11th by the state utilities commission.

The charge for the first 500 cubic feet used in a month will remain fixed at \$1.60. However, on the next 4,500 cubic feet used the charge is reduced from \$1.80 per thousand to \$1.60, and on all over 5,000 cubic feet the rate is lowered from \$1.10 to \$1 per thousand.

There is a prompt payment discount of 10 cents from the minimum bill for the first 500 cubic feet and 10 cents per thousand on the balance if paid before ten days from date of bill.

The petition for reduction was filed by the gas company last March 27th, after it had negotiated for some time with the commission, according to the *Raleigh News and Observer*.

To Start Utility Inquiry

THE North Carolina Utilities Commission plans to launch an inquiry, probably about the middle of May, into leased-wire charges of telephone and telegraph companies operating in the state, according to the *Raleigh News and Observer*.

The investigation, it is planned, shall include a probe into the telephone and telegraph companies' charges for leased wires which are used by press associations, radio stations, brokerage houses, business firms, and any other parties or corporations.



North Dakota

Utility Rates Reduced

THE railroad commission has approved general reductions in gas and electric rates embodied in an application of the Northern States Power Company for new rates at Grand Forks, Minot, and Fargo, the state's three largest cities, according to an announcement by Commissioner C. W. McDonnell.

Estimated to bring about an annual sav-

ing of between \$60,000 and \$70,000 to consumers, the new rates become effective on bills rendered after April 15th.

The new rates are for residential electric and water heating rates in Fargo and Grand Forks and residential electric rates in Minot. The proposed water heating rate for Minot was not approved.

The commission's approval included reduced residential and commercial gas rates at Fargo and Grand Forks.



Pennsylvania

PWA Agency Test Suit

THE legal division of the Public Works Administration and representatives of the

Allegheny County Authority, which is seeking \$32,000,000 for bridge construction in the Pittsburgh area, have agreed a test suit will be filed in the Pennsylvania State Supreme

PUBLIC UTILITIES FORTNIGHTLY

Court to determine the constitutionality of the legislative act setting up the authority. The authority was set up because of limitations

which had been placed on borrowings by municipalities under the Constitution of Pennsylvania.



South Carolina

Santee-Cooper Project Now Depends on Congress

FINANCING of South Carolina's Santee-Cooper project will depend initially upon the granting by Congress of additional funds through the Public Works Administration. This statement was made by PWA officials in Washington when advised of the enactment by the South Carolina legislature and the signing by the governor of the bill creating a state power authority empowered to take over and go forward with this thirty-four million dollar water-power development program, according to the *Columbia Record*.

"First, we must obtain new funds from Congress, for all of our present fund is already allocated and pledged," said a PWA official. "If and when we do have additional funds and the application from the state authority in South Carolina is before us in due form, I have no doubt it will receive prompt and sympathetic consideration. Power project applications always have a preferred status and in this case, since the original Santee-Cooper application is already on file, very likely the state authority will succeed to whatever priorities attached to the original application."

PWA officials are displaying considerable

reticence with respect to how much more money they want or expect to get from this Congress, the *Columbia Record* stated. They are waiting for the President to make the announcement.

Representative Taylor (D., S. C.), was advised by Public Works officials on April 6th that the engineering division had approved the application of Greenwood county for a \$1,600,000 loan for development of a power project at Buzzard's Roost on the Saluda river at Chappells, South Carolina.

Legislature Asks Power Company Report

THE South Carolina legislature adopted a resolution April 14th directing the railroad commission to report property valuations of Associated Gas and Electric subsidiaries in the state at the 1935 legislative session.

The house approved the resolution, a concurrent measure without force of law by Representative Lane of Richland, with little discussion. When it aroused objections in the senate, Senator Williams of Aiken said its passage was necessary to secure lower rural rates from private firms.



Tennessee

TVA Values to Be Aired at Institute

RECOGNITION, explanation, and interpretation of the Tennessee valley experiment were to be given at a Tennessee valley institute held at the University of Chattanooga with many of the nation's leaders and officials of the TVA in attendance as speakers and leaders of round table discussions.

Governor Hill McAlister was scheduled to extend greetings from the state of Tennessee on the second night of the institute, and Dr. Arthur E. Morgan, chairman of the TVA, was to speak on "How a New Social Order Can Come About."

The University of Chattanooga, under the direction of President Alex Guerry, is pre-

senting the institute because of the "great and far-reaching importance of the Tennessee valley development and because of the desire of the university to assist in interpreting the social and economic objectives of the Tennessee Valley Authority." Already it has been hailed as one of the most important institutes to be held in America this year, according to the *Nashville Banner*.

Aid Pledged for TVA Power

GOVERNOR Hill McAlister in a brief statement pledged co-operation to "any county or community seeking TVA power."

"I will, as governor, co-operate in every way to enable any county or municipality to have legislative authority to do anything nec-

PUBLIC UTILITIES FORTNIGHTLY

essary to construct transmission lines or distributing plants in order to get the full benefit of power generated at any of the dams now constructed or that may hereafter be

constructed by the TVA," the governor said. The statement followed his recent visit to East Tennessee where he inspected the Norris dam site and conferred with TVA officials.



Texas

To Rule on Utility Plants

THE right of home rule cities to condemn utility plants, pay for them, and operate them as municipal projects, will be considered by the supreme court of Texas, according to the Austin *American*.

The proposition was placed before the state's highest civil judiciary in an appeal

of the Lone Star Gas Company against the city of Fort Worth. That city had proceeded to make plans to take over the plant of the company and operate it after paying for it. There had been a long controversy about rates before the city moved to acquire the property.

The law as interpreted by the highest court will affect all home rule cities.



Utah

Phone Rates in Logan Cut; Ogden Asks Reduction

THE people of Utah won the first round of a battle for lower telephone rates when the state public utilities commission by unanimous vote decided to reduce the telephone rates of Logan City to a parity with those in effect in Provo. This temporary order, effective May 1st, is subject to further review of the commission during the course of the general case which the commission instituted on its own motion.

The general case of the public utilities commission against the telephone company, proposing a revision of the rate structure, will

be resumed October 15th, after completion of a detailed compilation and analysis of an inventory of the company's holdings and structure now in progress. The rate reduction will result in a saving of \$3,000 annually to the community.

A reduction in telephone rates in Ogden city will be asked of the Mountain States Telephone & Telegraph Company by the city commission, it was announced on April 14th, according to the *Deseret News*. Harmon W. Peery, mayor of Ogden, said a reduction in rates had recently been given Logan and he saw no reason why Ogden was not entitled to the same consideration, the *Deseret News* stated.



West Virginia

Trade Commission Probe of Senate Asked

DECLARING it "a known fact that the power interests have maintained a very strong hold on certain members of the state senate," Delegate Rush D. Holt, liberal leader of the house, has asked the Federal Trade Commission to investigate the activities of the companies in the West Virginia legislature, according to the Charleston *Gazette*.

Holt, in a letter to Robert E. Heely, chief counsel for the trade commission, said the request is prompted by "the recent exposure of the New York senate situation."

He said the West Virginia situation "re-

sembles the New York affair very much, although I believe the control of the power corporations is much more pronounced here than in the Empire state.

"I have given to the public the list of senators who are retained by the utilities but feel that there is much yet to be uncovered."

Representative Holt is chairman of the house committee that is investigating utility corporations in the state. He was the author of several bills for utility control in the recent session of the legislature. The measures were passed by the house but failed to get through the senate.

He expects soon to begin publication of the report of his committee's findings in its utilities investigation.

The Latest Utility Rulings

Massachusetts Rejects Theory of Fluctuating Utility Rates during Depression Period

IN striking contrast to much popular current thought on utility regulation is a recent decision of the Massachusetts Department of Public Utilities dismissing petitions for reduction in rates charged for gas and electricity by the Lynn Gas & Electric Company. The selectmen of Saugus petitioned for a reduction in rates charged by the Lynn Company to customers in that town, and selectmen of Marblehead made a similar petition for reduction of rates for electricity supplied in bulk to the town's distributing plant.

The Lynn Company has capital stock of \$4,095,000 par value and \$6,149,731 has been paid in additionally as premiums on capital stock making \$10,244,731 paid in capital. It had also, in 1932, a corporate surplus of \$3,426,158 and depreciation reserves of \$2,838,813. The total cash investment in property was \$15,169,155. It earned in 1932, \$991,417 net. These earnings were 8.04 per cent on the company's investment, less the depreciation reserves. Dividends paid in 1932 were 24 per cent on capital stock, which amounted to 7.19 per cent on the money actually paid in as capital plus accumulated surplus.

The Massachusetts commission occupies a unique position in that from the beginning of utility regulation it has persisted in using original cost as a basis of value for rate-making purposes, notwithstanding United States Supreme Court decisions requiring consideration of present fair value in estimating the rate base for purposes of testing the constitutionality of alleged confiscatory rate orders. The Federal courts of Massachusetts, however, are obliged to follow the law of the land. Some years ago a Federal district court in a case involving the Worcester Gas

Company found that the rate base of that company was \$15,295,000 as compared with a total cash investment including surplus amounting to \$8,594,407. The Massachusetts department estimated that under the law of the land the value for rate making of the Lynn Company as determined on the same basis would be found to be about \$24,000,000. Even allowing for expenditures on the Lynn plant at the higher prices ruling between 1926 and 1932, the Worcester basis would give a value of \$20,750,232, excluding intangibles. The department concluded that the return on present value under the law of the land would thus be not much more than 4 per cent, although dividends on capital stock par value were 24 per cent per annum.

The most striking passage of the commission's order had to do with its opinion of rate making during an economic depression. The department stated:

The notion that prices of services furnished by a public utility should rise and fall with the prices of other commodities is unsound. A public utility is performing a public service which might properly be undertaken by the public itself. We allow to those who furnish the capital a reasonable return as compensation for furnishing this capital. It is much the same as when the public pays interest on bonds to obtain the necessary capital to establish and maintain such an enterprise itself. Obviously, the payment for the use of capital, where the enterprise is privately conducted, must be larger than where the public borrows the money itself, because the public in no way guarantees the repayment of the capital and the company must also pay taxes on the capital employed. Under the system of regulation as administered in the commonwealth there is not much more reason to expect rates to be reduced in times of depression than there is to expect like reductions in taxes. . . . There is less

PUBLIC UTILITIES FORTNIGHTLY

reason to expect such reductions by the privately operated utility than by the publicly operated utility, as the privately operated utility must meet taxes from which the publicly operated utility is free.

The department pointed out that even had the Lynn property been purchaseable in 1932 for the amount of its cash investment in plant and operated in "public ownership," it would have cost the "public" \$606,722 for interest charges (at 4 per cent) on purchase-money bonds, plus \$679,629 for loss of taxes paid by the company, making in all \$1,286,395, as against \$991,417, the

company's net earnings, so that private operation saved the "public" in 1932 some \$295,000 as against "public ownership."

It was also found that had the company been free of taxes in 1932, it could have served all its customers, except those using no more than twenty-five kilowatt hours per month, for less money than does the Holyoke plant, one of the best municipal operations in the state. *Saugus v. Lynn Gas & Electric Co.* (Reported in full in this issue at 2 P.U.R.(N.S.) 433.)



Texas Jury Upholds Commission Rate Reduction Order

THE verdict returned by the jury in the Fifty-Third Texas District Court on April 12th, upholding an order of the commission of that state fixing rates for the Laredo gas company marks what will probably be regarded as an important event in the history of public utility regulation in that it apparently is the first time a rate case has been submitted to a jury—within recent years at least. Heretofore, the determination of the reasonableness of commission rate fixing has usually been exercised by courts, either Federal or

state, consisting of judges acting without the aid of a jury.

The case originated from the appeal of the company from an ordinance of the city of Laredo seeking to reduce the rates for natural gas from 67½ to 40 cents per thousand cubic feet. Upon appeal by the utility the Texas commission fixed the rate at 55 cents. The commission's determination of this rate upon further appeal to the state court was sustained by a Travis county jury. *City of Laredo v. Texas Border Gas Co.*



Uncertificated Operations of "Club Boat" Ferry Service Restrained

THERE have been a number of court and commission decisions to the effect that competitive motor carrier operations cannot be carried on without commission approval under the guise of so-called "clubs" or "associations" notwithstanding the fact that the service is, or purports to be, restricted to the members of such associations. The first time that this doctrine, however, has been applied to ferry boat service arose in a case recently decided by the Washington Supreme Court.

For some years the Kitsap County

Transportation Company has been rendering ferry boat service across Puget Sound between Seattle and points on Bainbridge Island. Some months ago the residents on the northern end of the island became dissatisfied with the existing service, and the Puget Sound Navigation Company applied for and received from the state commission a certificate to install a competitive vehicular ferry service between Seattle and a point somewhat north of the terminal of the Kitsap County Transportation Company. Upon appeal the court re-

PUBLIC UTILITIES FORTNIGHTLY

versed the commission's order granting the certificate.

Thereupon certain residents of Bainbridge Island organized the Manitou Beach-Agate Pass Ferry Association. The ostensible purpose was "to create a social, benevolent, and charitable organization." The real purpose appeared to be the establishment of a vehicular ferry service between Seattle and Manitou Beach. The association chartered a steam ferry to make a specified number of daily round trips and proceeded to operate upon the theory that it was a "club boat" for the convenience of "club members" and that the ferry service was restricted to members, their families, servants, and guests. Upon suit by the Kitsap County Transportation Company against this new form of competition, the Washington Supreme

Court recently held that an injunction should be granted because it was obvious that the ferry service was the primary, if not the sole, purpose for which the alleged association had been organized.

It was pointed out that it was without substantial assets and that its membership fee was nominal—\$1 a year—and that membership was open to all who might desire transportation between Seattle and Bainbridge Island. The court was of the opinion that under such circumstances the club was merely a subterfuge to perform a service which had already been declared contrary to public convenience and necessity when attempted by an avowed commercial carrier. *Kitsap County Transportation Co. v. Manitou Beach-Agate Pass Ferry Association et al.*



Alabama Commission Extends "Objective" Rate Fixing to Commercial Electric Service

ON August 29, 1933, the Alabama commission commenced a series of electric rate reductions affecting the Alabama Power Company, which culminated with a recent order affecting commercial electric service amounting to approximately \$101,000 a year, making a total of \$553,000 a year in electric rates reduced since the beginning of the proceeding.

Probably the most interesting feature of the Alabama rate reduction has been the initiation of the so-called "objective" rate plan first used in connection with the commission's order affecting residential rates on September 2, 1933. In its most recent order the commission referred to the success of this plan and stated that while sufficient time has not elapsed to reach a final conclusion regarding the plan, it appears to be increasingly popular with, and advantageous to, urban residential customers, as shown by the fact that in February, 1934, approximately 50 per cent of the company's customers received service at the "objective" residential rates as a re-

sult of having materially increased their uses of electric service.

In revising commercial rates, the commission asserted that it had four main objectives in mind: (1) lowering of the present rates to the small user; (2) elimination of optional rates which place the burden on the customer to select one of two different rates for his service; (3) simplification of the determination of capacity requirements, and (4) making the "objective" rate plan available to commercial customers.

The commission applied the plan to commercial customers under practically the same conditions as the objective residential rate now applies. It was accomplished in this fashion: the commission prescribed a new rate (classification CD-1), known as the "immediate" service classification, which materially lowered the bills of customers with small monthly consumption. In addition the commission prescribed an alternative "objective" service classification (C-4) which would permit the customers to increase their use at much

PUBLIC UTILITIES FORTNIGHTLY

lower cost than has heretofore been possible.

Although the customer may receive service under either of these classifications, the company must assume the burden of billing the customer under the lower rate. That is how elimination of the usual optional rate practice is accomplished.

The plan creates an incentive, or "objective," calculated to induce the customer to increase his usage, but at the same time does not penalize him should he elect not to do so. The commission in its formal order has also made the "objective" rate plan available to rural consumers. *Re Alabama Power Co. (Docket 6483.)*



Wisconsin Court Restrains Unlawful Competition by Municipal Plant

THE supreme court of Wisconsin has sustained contentions of the Wisconsin Power and Light Company to the effect that a city cannot, without a certificate of convenience and necessity from the state commission, construct its own power plant to compete with a private company holding an exclusive indeterminate permit to serve within such municipality.

The case arose in an action by the utility to restrain the city from constructing a municipal plant in Beloit, Wisconsin. On appeal by the utility from a lower court decision overruling the utility's demurrer to an answer filed by the city, the supreme court reversed the lower court and directed it to sustain the utility's demurrer. The court held:

Under Chap. 197 Stats. a municipality cannot engage in furnishing such service without procuring an existing public utility that is operating within it under an indeterminate permit or without first procuring from the public service commission a certificate of convenience and necessity. Such a public utility has a franchise not only to furnish electrical service to the inhabitants but to the municipality itself. We

cannot by such far-fetched and fanciful speculations impute to the legislature an intention to confer upon a municipality the right to destroy the property of a public utility operating therein under an indeterminate permit, devoted to municipal purposes and to deprive it of its franchise to supply the municipality as well as its inhabitants secured to it under the general provisions of that law as interpreted by this court over twenty years ago. The law permits a city to take over in its entirety the plant of a public utility so operating therein if it desires to do so by following the statutory procedure therefor. But it does not permit a city to do so piecemeal by first destroying the property of the existing utility devoted to, and its franchise for, municipal service and then, after it has by this means depreciated the value of its franchise for private service, take over that franchise and the plant and equipment devoted to that service at its depreciated value, as it might do if the contentions of the defendant herein are sustained.

The court also held that the unlawful competition by the municipal plant under such circumstances would exist, notwithstanding the fact that it contemplated engaging only in street lighting and other service for municipal purposes. *Wisconsin Power & Light Co. v. City of Beloit. (No. 49.)*



Commission Allows Blue Eagle Cost As Operating Expense

THE New York commission has recognized as a factor in rate making increased operating costs due to higher taxes and the NRA code as well as declining business, and accordingly has substituted an order for a 5 per

cent cut in electric rates of the Staten Island Edison Corporation in place of a 10 per cent cut ordered in October, 1933.

The commission's revised opinion is the result of a rehearing requested by